

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RICHARD MARSHALL,

Plaintiff,

v.

**CHRIS WEST, in his individual capacity,
LASHUN HUTSON, in his individual capacity**

Defendants.

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Civil Case No. 2:06-cv-701-ID-CSC

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff, in the above styled cause, by and through their counsel of record, and respond to Defendants' Motion for Summary Judgment as follows:

1. STATEMENT OF FACTS.

On the afternoon of June 28, 2005, Richard Marshall was driving his 1971 Chevrolet Nova home on County Road 7 in Lowndes County. (Ex. 1, Marshall Dep. 27:15-17, 36:8-10, Nov. 14, 2007.) Riding in the passenger seat was his cousin Kelvin Carmichael. (Ex. 2, Carmichael Dep. 26:7-10, Nov. 14, 2007.) Marshall and Carmichael had spent the morning at their aunt's house pulling an engine with their cousins. (Marshall Dep. 23:23-24:11.) Inside the car the two men sat on a bench-style seat and between them rested a 357 Magnum pistol. (Marshall Dep. 61:14-62:19.) Carmichael had neither seen the pistol nor seen Marshall with a gun before but did not ask why the pistol was there. (Carmichael 29:8-31:2.)¹ County Road 7

¹Marshall did not have a concealed weapon permit, (Marshall Dep. 33:10-11.), but the pistol did not belong to Marshall. The owner of the pistol had left it in Marshall's car three or four days earlier after receiving a ride. (Marshall Dep. 30:10-32:21.)

was empty, and Marshall drove down the narrow and curvy rural road around thirty-five to forty miles per hour in the hot afternoon with the windows down and the music playing loudly.

(Marshall Dep. 45:10-46:6.)

The only other car on the road Marshall saw that afternoon was a bluish or aquamarine Lincoln Town Car that was traveling towards them in the opposite direction. (West Dep. 21:10-13, Jan. 21, 2008.) After the car passed by, Marshall glanced in his rearview mirror and saw something strange: the passing car appeared to slam on its brakes and started veering off to the side of the road. (Marshall Dep. 39:14-41:2.) Marshall thought that perhaps the driver was drunk or the car's tire had blown out, and he kept driving towards home. (Marshall Dep. 41:1-10.)

Without warning, the aquamarine car suddenly appeared in the passing lane next to them. (Marshall Dep. 41:13-19.) Inside were two black males in black t-shirts that neither Marshall nor Carmichael recognized. (Marshall Dep. 36:8-10; Carmichael Dep. 34:4-5.) The passenger appeared to be motioning Marshall to pull over, but having been robbed before Marshall was not about to simply pull over on a deserted country road for two unknown men crazily driving a civilian car. (Marshall Dep. 46:13-47-23; 50:3-5.) Instead, Marshall yelled at the men, "What the fuck y'all want." (Marshall Dep. 50:1.) Unfortunately for Marshall, he had just unknowingly cursed at Lieutenant Christopher West and Officer Lashun Hutson. (West Dep. 22:17-19; Hutson Dep. 20:10-11, Jan. 21, 2008.)

Also unknown to Marshall, West and Hutson had been looking for him earlier that day. (West Dep. 14:17-20.) The officers had been following up on a tip from an anonymous source claiming that Marshall had been selling drugs. (West Dep. 14:1-11.) The anonymous source was

not a reliable witness. (West Dep. 17:20-23.)² Neither officer had any prior dealings with Marshall. (West Dep. 16-18; Hutson Dep. 12:3-6.) Additionally, Marshall had never been arrested for any drug related charges. (Marshall Dep. 17:8-23:4.) Thus, the officers had driven out to Marshall's home merely to do a "knock-and-talk." (West Dep. 14:1-20.)

After leaving Marshall's home, the officers were driving their bluish or aquamarine Lincoln Town Car on County Road 7 when they passed Marshall's car and turned around to pursue. (West Dep. 18:23-19:18.) Marshall was driving the speed limit. (West Dep. 20:16-17.) West coincidentally observed that neither Marshall nor Carmichael was wearing a seatbelt,³ which provided probable cause to stop Marshall so that West could question him about drugs. (West Dep. 56:17-57:2.) While Marshall does not dispute that he was not wearing his seatbelt, (Marshall Dep. 28:22-23), Carmichael was wearing his. (Carmichael Dep. 27:16-17.)⁴ West then pulled alongside Marshall's car. (West 21:7-9.)

After Marshall cursed at them, West pulled the aquamarine car back behind Marshall's but did not activate either a siren or flashing blue lights. (Marshall Dep. 49:1-9.) Because County Road 7 is wavy, Marshall could not speed up, and he continued to drive between thirty-five and forty miles per hour toward Highway 21 and home. (Marshall Dep. 53:8-22.) Although

²Within the time frame allowed, the officers would have obtained a search warrant had the anonymous source been reliable. (West Dep. 17:16-18:8.)

³Factually, it is unclear whether West saw that Carmichael was not wearing his seatbelt. West's incident/offense report originally states that neither the driver nor passenger was wearing a seat belt. (West Dep. 52:23-53:2, 56:17-21.) Subsequently, West states he saw that Marshall was not wearing his seatbelt. (West Dep. 19:20-22.)

⁴Although Marshall does not recall wearing his seatbelt, Carmichael recalls that Marshall was wearing his and in fact told Carmichael to put his belt on. (Carmichael Dep. 27:18-28:5.)

the aquamarine Lincoln Town Car was riding his bumper, Marshall did not try to speed away because he was afraid of getting hurt on the wavy road. (Marshall Dep 53:23-54:5.) Moreover, Marshall's car could not run very fast anyway. (West Dep. 21:22-23.) Marshall stayed close to the speed limit while on County Road 7. (Hutson Dep. 17:15-21.)

At the intersection of County Road 7 and Highway 21, Marshall performed a rolling stop and then turned right onto Highway 21 towards home. (Marshall Dep. 52:4-10.) The intersection does not have a stop sign; it has a yield sign with a flashing yellow light. (Marshall Dep. 51:15-16; Carmichael Dep. 40:9-18.) Once on Highway 21, Marshall sped up a little. (West Dep. 48:6-7.) Marshall got his slow running car up to about fifty-five miles per hour when the aquamarine car again pulled beside them. (Marshall Dep. 53:6-7.) As Marshall looked over he again saw the unknown man waving him over but this time Marshall also saw a gun in the man's hand.⁵ (Marshall Dep. 54:9-23.) Carmichael also saw the man holding the gun and asked who the men in the aquamarine car were. (Carmichael Dep. 41:16-22.) Marshall told Carmichael that he did not know but he thought that they were out to rob them, and he was not going to stop. (Marshall Dep. 57:3-7.) Carmichael then told Marshall not to let the unknown men catch them. (Carmichael Dep. 41:16-22.)

The aquamarine car again fell behind Marshall's car and rammed his car in the rear. (Marshall Dep. 60:2-4.) Marshall almost lost control and slowed from about fifty-five miles per hour to around thirty-five to forty miles per hour. (Marshall Dep. 64:4-9) After about ten

⁵While both Marshall and West stated that they activated their flashing blue light and showed their badges, both Marshall and Carmichael testified that the officers did not activate a blue flashing light or show their badges. (Marshall Dep. 59:14-17; Carmichael Dep. 38:16-7, 55:5-16.)

seconds, Marshall's car was again rammed from the rear.⁶ Carmichael then saw that one of the men appeared to be talking on a radio and then told Marshall that he thinks they may be cops. (Carmichael Dep. 46:21-47:3.) Immediately after, the aquamarine car rammed Marshall's car on the rear driver's side sending Marshall's car off the road causing Marshall's head to hit the steering wheel. (Marshall Dep. 69:16-70:3.)

West and Hutson jumped from the car with their weapons drawn and yelled for Marshall to get out of the car. (West Dep. 30:18-23.) At some point after exiting their car the officers pulled their badges from under their shirts. (Carmichael 55:8-18.) Dazed from hitting his head Marshall opened his door, stepped out of the car, and held his hands up. (Marshall Dep. 86:8-9.) West ordered Marshall to get on the ground. (West Dep. 32:1-18.) Marshall, dazed, confused, and agitated, remained standing with his hands up asking what was going on. (Marshall Dep. 86:8-87:9.) West then fired his gun into the ground approximately six to eight feet from where Marshall stood. (West Dep. 32:18-21; Hutson Dep. 25:14-15.)

Marshall stood frozen while West approached with his gun raised. (West Dep. 32:22-33:7.) West then swept Marshall's feet slamming him to the ground face first, put a foot in Marshall's back, and cuffed him. (Marshall Dep. 90:3-9.) After cuffing Marshall, West approached Marshall's car and saw the pistol in the seat for the first time. (West Dep. 33:15-21.)

⁶At about this point in the chase, West and Hutson state that Marshall threw out a plastic baggie containing drug evidence and that hit their windshield. (West 24:1:4; Hutson 22:21-23:2.) The officers' original statements omitted any mention of an object striking their windshield. (West Statement, Ex. 5; Hutson Statement, Ex. 6.) This testimony is highly disputed because lab tests on the baggie found neither fingerprints nor drug residue. (West Dep. 45:1-10; Forensic Reports, Ex. 8) Additionally, both Marshall and Carmichael deny that any such baggie was thrown out of the window. (Marshall Dep. 74:17-21; Carmichael Dep. 48:9-11.)

After West had cuffed Marshall, Hutson got Carmichael out of the car, cuffed him, and put him on the ground. (Hutson Dep. 25:1-6.) Afterward, Hutson walked back to Marshall's car and saw the pistol in the seat for the first time. (Hutson Dep. 28:8-15.)

West then pulled Marshall off of the ground, set Marshall against the car, and began asking why he did not pull over when they showed their badges. (Marshall Dep. 96:1-3.) Marshall stated that he did not see any badges, only a gun. (Marshall Dep. 96:3-4.) West then grabbed Marshall's pants, shoved him against the car, and searched him. (Marshall Dep. 96:5-8.) During the search West removed Marshall's wallet and threw it into the back seat. (Marshall Dep. 96:8-11.) Marshall's wallet contained five hundred dollars at that time. (Marshall Dep. 33:12-16.) West then told Marshall to get in the back of his Nova, but Marshall, because he is a large man, stated he could not fit in the small back seat of his car. (Marshall Dep. 99:13-19.) Angered, West grabbed Marshall by the pants and slammed him against the car breaking the zipper and button causing Marshall's pants to fall to the ground. (Marshall Dep. 99:19-100:1; Carmichael Dep. 69:21-23.) West then choked Marshall until he could not breathe and forced him into the back of the Nova.⁷ (Marshall Dep. 101:19-102:36; Carmichael 69:18-70:3.)

By this time cars were driving by on Highway 21. (Marshall Dep. 100:5-6.) West then walked over to the aquamarine car and put the blue light on roof of the aquamarine car. (Marshall Dep. 100:9-10.) At first the blue light would not work, and West had to bang on the light three or four times before it started working. (Marshall Dep. 100:10-22.) After other

⁷At this point if West's version of the facts is to be believed, after West had just run Marshall off the road, shot a gun in his direction, slammed him to the ground, and cuffed him, West suddenly became concerned that Marshall, having just lost his pants, might feel humiliated being seen in his boxer shorts; therefore, out of concern for Marshall, West forced him into the backseat of the Nova. (West Dep. 34:3-19.)

officers arrived, Marshall was put in a patrol car and taken in for booking. (Marshall Dep. 118:3-11.) At booking Marshall noticed most of his money was missing and called it to a deputy's attention, but West stopped him and told the deputy not to worry about it. (Marshall Dep. 123:7-18.) Marshall received a courtesy warning for attempting to elude and a seatbelt violation. (Ex. 7.) Marshall was charged with possession of a controlled substance and carrying a pistol without a permit. (Marshall Dep. 138:10-16.) All charges against Marshall were dropped. (Marshall Dep. 139:2-4.)

II. STANDARD OF REVIEW.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when “the pleading, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The party requesting summary judgment “always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Id.* at 323. The movant can meet this burden by presenting evidence showing there is no dispute of material fact, or by showing the non-moving party has failed to present evidence in support of some element of its case on which it bears the ultimate burden of proof. *Id.* at 322-23.

Once the moving party has met its burden, Rule 56(e) “requires the nonmoving party to go beyond the pleadings and by [its] own affidavits, or by the ‘depositions answers to

interrogatories and admission on file,’ designate ‘specific facts showing that there is a genuine issue for trial’”. *Id* at 324. To avoid summary judgment, the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). On the other hand, a court ruling on a motion for summary judgment must believe the evidence of the non-movant and must draw all justifiable inferences from the evidence in the non-moving party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). After the nonmoving party has responded to the motion for summary judgment, the court must grant summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed R. Civ. P. 56(c).

“Under the established rule of law in this Circuit, a plaintiff can survive a motion for summary judgment or for judgment as a matter of law simply by presenting evidence sufficient to demonstrate a genuine issue of material fact as to the truth or falsity of the employer's legitimate, nondiscriminatory reasons.” *Evans v. McClain of Georgia, Inc.*, 131 F.3d 957, 964-65 (11th Cir. 1997).

III. ARGUMENT.

Under § 1983, police officers may be held accountable when their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. *Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002). A plaintiff can establish that the law clearly provided notice to the officers that their conduct was unconstitutional by submitting fact-specific precedents or demonstrating that the conduct “lies so obviously at the very core of what the Fourth Amendment prohibits that the unlawfulness of the conduct was

readily apparent.” *See Id.* at 1355. Here, the grossly disproportionate force used against Marshall for a seatbelt violation is a clearly established constitutional violation because no reasonable officer could have believed that Defendants’ actions were legal. Under the totality of the circumstances, Defendants’ actions as a whole constituted an unreasonable breach of Marshall’s Fourth Amendment rights.

A. Crucial Factual Distinctions.

Before proceeding to the legal argument, Plaintiff must address certain facts proffered by Defendants in support of their motions. First, the pistol and bullets discovered in Marshall’s car are not relevant. For evidence to be relevant it must be probative of a fact of consequence. Fed. R. Evid. 401. The pistol and bullets are not relevant because, according to their own testimony, Defendants did not know about the pistol or bullets until after Marshall was in handcuffs. (West Dep. 33:15-21; Hutson Dep. 28:8-15.) Thus, Defendants may not justify their precursory actions by the presence of the pistol.

The facts demonstrate that Marshall did not intend to use the pistol against Defendants. After his car was forced off of the road and Marshall was ordered out of his car, he complied. Marshall’s movements as he opened the car door, stepped out, and held his hands up clearly distanced him from the pistol. While Hutson testified that he saw Marshall reaching back into his car, and he believed that was the reason West fired his pistol, his testimony is not admissible. Testimony must be based on personal knowledge. Fed. R. Evid. 602. Here, Hutson’s testimony attempts to express what was in West’s mind when West fired his gun, which is clearly beyond the scope of Hutson’s personal knowledge.

West’s own testimony disputes Hutson’s allegation that Marshall attempted to reenter his

car. West first testified that Marshall was out of his car, standing between the car and open door, and was yelling and cussing. (West Dep. 32:11-14.) West then testified that he then fired his weapon after Marshall did not get on the ground immediately. (West Dep. 32:14-21.) Thus, West demonstrates that he did not see Marshall make an attempt to reach back into his car.

Second, Defendants' allegations about Marshall throwing drug evidence out of his car window is not merely a disputed fact; it is a nonexistent fact. Defendant West improperly proffers that "[a]s the undisputed facts show, Lt. West did not execute the PIT maneuver until after a baggie containing a white powdery substance hit his windshield." (West Mem. Supp. Summ. J. 31) (emphasis added). He then went on to improperly claim that the baggie contained illicit drugs. (West Mem. Supp. Summ. J. 31.) These statements are improper and deceptive for the three following reasons: 1) a baggie being thrown from Marshall's window is a disputed fact; 2) the existence of white powder or any drugs in the alleged baggie is a disputed fact; and 3) a baggie containing illicit drugs is a nonexistent fact.

An undisputed fact is an uncontested or admitted fact. *Black's Law Dictionary* 269 (2nd pocket ed. 2001). Here, both Marshall and Carmichael expressly deny that any baggie was thrown out of the window. (Marshall Dep. 74:17-21; Carmichael Dep. 48:9-11.) Additionally, West even testified that at the point the [alleged] baggie was thrown out the window there was no evidence that Marshall threw drugs out of his window or possessed drugs. (West Dep. 49:18-22.) Therefore, these facts are clearly disputed and Defendant's attempt to classify them otherwise in order to influence this Court is clearly improper.

No factual evidence exists that demonstrates Marshall had illicit drugs in his possession. Defendants presented a baggie to the lab for forensic testing; however, the tests found neither

fingerprints nor drug residue.⁸ (West Dep. 45:1-10; Forensic Reports, Ex. 8.) Instead, the only “evidence” that supports Defendants’ allegations is their subjective belief contrary to forensic results and a discarded sandwich bag from somebody’s lunch.

B. Additional Misrepresentations of Fact

In addition to the factual errors noted above, the Memorandum Brief in Support of Defendant Chris West’s Motion for Summary Judgment proffers more misrepresentations of fact to this Court.

Defendant West erroneously informs this Court that there is no evidence in the record that Marshall ever tried to tell Defendants he did not know they were police officers. (West Mem. Supp. Summ. J. 10 footnote 4.) Marshall stated in his deposition, however, that he tried to tell West he thought they were trying to rob him. (Marshall Dep. 97:1-4.)

Defendant West incorrectly cites to his deposition as stating that both Marshall and Carmichael were not wearing seatbelts when the deposition only mentions Marshall. (West Mem. Supp. Summ. J. 8) (*citing* West Dep. 19:20)).

Defendant West states they received information that Marshall was selling drugs but avoids bringing a crucial fact to this Court’s attention. (West Mem. Supp. Summ. J. 8) West testified that the tip did not come from a reliable source and was insufficient to show probable cause. (West Dep. 17:20-23.)

Despite forensic tests and West’s testimony to the contrary, Defendant West erroneously states that a baggie with residue was subsequently found by Defendants. (West Mem. Supp.

⁸However, contrary to the laboratory tests, West testified that he still believes the baggie contained residue. (West Dep. 58:8-10.)

Summ. J. 26.) West testified that the lab tests prove there were neither drugs nor residue found in the baggie. (West Dep. 58:2-7.)

Defendant West improperly states that Marshall admitted to fleeing from Defendants. (West Mem. Supp. Summ. J. 32). Marshall has not admitted to fleeing from Defendants; rather, he has admitted to not pulling over at the demand of two unknown and unidentified persons.

Finally, Defendant West states that West “conceded” there was a high speed chase when clearly this point is not his to concede. (West Mem. Supp. Summ. J. 32.) However, Defendant avoids mentioning that West testified that Marshall’s 1973 Nova could not run very fast. (West Dep. 21:22-23.)

Plaintiff has addressed Defendant’s factual misrepresentations and errors as well as possible. However, because West’s motion misrepresents numerous facts to this Court, Plaintiff requests this Court summarily deny Defendant West’s motion due to the lack of candor and reliability of the brief. Defendant Hutson’s motion does not contain similar factual misrepresentations. However, due to Defendant Hutson’s express adoption of “any and all arguments made by Chris West,” (Hutson Mem. Supp. Summ. J. 4.), Plaintiff requests denial of Hutson’s motion on the same grounds.

C. Defendants’ unreasonable actions taken as a whole resulted in a violation of Marshall’s Fourth Amendment Rights.

The touchstone of a court’s “analysis under the Fourth Amendment is always ‘the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.’” *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977). “Reasonableness, of course, depends ‘on a balance between the public interest and the individual’s right to personal

security free from arbitrary interference by law officers.’” *Id.* at 109. Here, Marshall’s actions were reasonable; conversely, Defendants’ actions were not.

Marshall’s actions were reasonable. Under the Alabama Code § 32-5A-193, in order to flee or attempt to flee from a police officer, the driver must “willfully” fail to stop his car or flee when given a visual or audible signal. Although his greeting to Defendants when they pulled up beside him was less than ideal, Marshall had no reason to know that Defendants were police officers. First, Defendants’ car did not look like a police car. Defendants drove a bluish aquamarine Lincoln Town Car. Defendant West even testified that their car did not look much like a police car. (West Dep. 21:14-15.) Second, Defendants were not dressed in uniform. Marshall saw two unknown men wearing black t-shirts. West testified that they were wearing street clothes. (West Dep. 60:18-22.) Third, Defendants had not activated a flashing blue light or a police siren.⁹ Rather, Defendants did not activate the flashing blue light until after Marshall was already in handcuffs and even were unable to activate the light until West banged on it a few times. (Marshall Dep. 100:10-22.) Defendants did not expressly state that they did not activate a police siren; however, because the Lincoln Town Car had been confiscated and acquired through a condemnation proceeding, it likely was not equipped with a siren.¹⁰ (West Dep. 13:13-21.) While Defendants blew the horn and flashed the headlights, (West Dep. 21:7-9), those actions

⁹Defendants aver that they deployed the flashing blue lights by plugging it into the cigarette lighter (West Dep. 19:22-21:2); however, in the light most favorable to the nonmoving party and for the purposes of this motion, Defendants did not deploy the flashing blue light. (Marshall Dep. 49:1-9)

¹⁰Additionally, West’s deposition states that he activated a flashing blue light, honked his horn, and flashed his lights, but omits any mention of siren. (West Dep. 19:20-21:9.) In absence of evidence to the contrary under this motion’s standard of review, stating that Defendants used no siren is proper.

would alone would not reasonably identify Defendants as police officers. Had the Defendants actually activated a blue flashing light and siren, blowing the horn and flashing the headlights would not have served any purpose.

Marshall's belief that Defendants posed a threat was reasonable. While Marshall's fear was likely motivated in part because he had previously been robbed, his belief that Defendants posed a threat was not irrational. First, as noted above, Defendants did not adequately identify themselves as police officers. Second, this incident occurred on a deserted country road. Third, Defendants were strangers to Marshall. Finally, Defendants' behavior, objectively viewed by someone unaware that they were police officers would be charitably described as erratic. Due to Defendant West's turn-around maneuver, Marshall at first thought either the driver was drunk or had a flat tire. The next time Marshall saw Defendants they had pulled beside him on the narrow country road, were waving their arms at him, and were yelling out the window at him. Defendants then followed him, honked their horn, flashed their lights, and stayed right on his bumper.

Under the circumstances, Marshall's actions were reasonable. While Defendants have framed this incident as a high speed pursuit where Marshall attempted to elude them, the facts demonstrate a rather average speed chase where Marshall simply did not pull over. West even testified that Marshall's car could not run very fast. (West Dep. 21:22-23.) The majority of the so called "chase"¹¹ took place on County Road 7. While on County Road 7, it is undisputed that Marshall did not exceed the speed limit. (Hutson Dep. 17:15-21; West Dep. 19:12-20:17.)

¹¹Plaintiff is using the word "chase" rather loosely and does not concede that an actual chase indeed took place but is merely using the word to describe the incident.

While the speed limit was approximately forty-five miles per hour, Marshall was driving between thirty five to forty miles per hour, and did not speed even while Defendants rode his bumper. (Marshall Dep. 45:10-46:6; 48:15-17.) Once Marshall turned onto Highway 21, he simply continued driving toward home until he was run off of the road by Defendants.

Conversely, Defendants' actions were unreasonable. What began as a pretextual seatbelt stop,¹² led to Defendants ramming Marshall's car numerous times, running his car off the road, discharging a weapon in his direction, manhandling, strangling, arresting him, and stealing his money. The test for determining whether officers have acted reasonably under the Fourth Amendment is an objective reasonableness test. *Graham v. Connor*, 490 U.S. 386, 396 (1989.) While Defendants' pretextual justification for pulling Marshall over may have been objectively reasonable under Defendants' version of the facts at the start of this encounter, that same justification cannot overcome Marshall's reasonable expectation that Defendants would at least adequately identify themselves before running him off the road, shooting at him, manhandling, and then arresting him.

Whether officers' actions are objectively reasonable "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. Here, the severity of Marshall's crime was very low: a seatbelt violation, a non-arrest matter for which only a traffic ticket could be issued. Marshall also did not pose a threat to anyone's safety.

¹²West admits that he wanted to use the seatbelt violation for the purpose of pulling Marshall over to question him about drugs. (West Dep. 56:17-57:2)

He did not try to outrun the Defendants; instead, he drove the speed limit and merely did not pull over because he did not know that Defendants were police officers. Conversely, Defendants' actions were unreasonable from the start because they failed to adequately identify themselves and drove behind Marshall in an aggressive manner. Eventually Defendant West executed a dangerous and destructive PIT maneuver even though Marshall was only driving thirty-five miles per hour at the time. (West Mem. Supp. Summ. J. 32.)

Additionally Marshall did not resist or attempt to evade. While driving, Marshall did not attempt to leave the road or lead Defendants on a path through the woods. (West. Dep. 49:9-13.) After Defendant West executed the PIT maneuver, Marshall exited his car and held his hands up. (Marshall Dep. 86:8-9.) While he did not get on the ground, and was vociferous because Defendants had just run him off the road, Marshall did not make a violent move against Defendants, never attempted to hit Defendants, and never attempted to run away. (West Dep. 59:6-12.) Even so, Defendant West fired his weapon into the ground a mere six to eight feet away from where Marshall stood. (West Dep. 32:16-21.) Subsequently, West threw Marshall to the ground, choked him, and arrested him all because of a seat belt violation.

West's warning shot was constitutionally unreasonable. The Supreme Court has provided guidelines for determining when it is constitutionally reasonable for a police officer to use deadly force when firing a gun at a suspect. *Acoff v. Abston*, 762 F.2d 1543, 1547 (11th Cir. 1985) (citing *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985)). The *Garner* standard contains the three following elements: 1) the officer must have probable cause to believe the suspect poses a threat; "[p]robable cause of this sort exists where the suspect actually threatens the officer with a weapon or where there is probable cause to believe that the suspect has committed a crime

involving the infliction or threatened infliction of serious physical harm” 2) deadly force must be necessary to prevent escape, and 3) the officer must give fair warning if possible. *Acoff*, 762 F.2d at 1547.

Under the *Garner* standard, West firing his gun in Marshall’s direction is clearly unreasonable because Marshall was not armed, was not threatening Defendants with a weapon, and was not attempting to escape. (West Dep. 32:14-21.) Arguably, West did not use deadly force because he was aiming at the ground. However, *Garner* is a reasonableness standard; thus, the determination cannot rest purely on whether the bullet actually hit its mark. Additionally, at least one court has acknowledged that firing a warning shot could possibly constitute a use of deadly force. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1184 (N.D. Cal. 1995). Here, Marshall was subjected to potential deadly force because West aimed and fired his weapon within a mere six to eight feet from where Marshall stood. (West Dep. 32:18-21.)

Contrary to Defendant West’s argument, the Eighth Circuit did not expressly hold that firing warning shots in the air near a crowd does not violate anyone’s constitutional rights. (Def. Marshall Mot. Summ. J. 33 (*citing Otey v. Marshall*, 121 F.3d 1150, 1156 (8th Cir. 1997))). Rather, Defendant manufactured that holding out of whole cloth. In *Otey*, the court held that a police chief did not violate a well established right for failing to properly train a subordinate officer who fired the warning shots into the air. *Otey*, 121 F.3d at 1156. Analyzing the facts, the Eighth Circuit discussing the facts reasoned that the subordinate officer’s warning shots in a crowd did not violate anyone’s rights because there was no evidence that anyone was seized, unconstitutionally or otherwise, because afterward the crowd dispersed and there were no arrests. *Id.* Thus, *Otey* is highly distinguishable from this case and frankly not even on point.

West executing PIT maneuver on Marshall's car was unreasonable. In *Scott v. Harris*, police officers clocked a driver going seventy-three in a fifty-five mile per hour zone. ___ U.S. ___, 127 S. Ct. 1769, 1772 (2007). During the chase the driver went at speeds over eighty-five miles per hour on the freeway, through a parking lot, and even collided with one police car. *Id.* at 1773. After being given permission by his supervisor, an officer employed a PIT maneuver. *Id.* As a guidepost for determining whether the officer acted reasonably in executing a PIT maneuver, the Supreme Court stated "[w]e think it appropriate . . . to take into not only the number of lives at risk, but also their relative culpability. *Id.* at 1778. The Court noted that the facts showed the driver's actions had put the lives of the police officers and other drivers at risk, had ignored multiple police cars with sirens and flashing lights, and drove recklessly at high speeds. *Id.*

Conversely, Marshall's culpability did not rise to anywhere near the level of *Scott*. First, Marshall was unaware that Defendants were police officers. Second, Marshall drove neither recklessly nor at excessive speeds. Third, Marshall's driving was not putting anyone's safety at risk. Finally, Marshall's sole offense was a pretextual seat belt violation.

West choking Marshall and forcing him into the back seat of the Nova was unreasonable. In *Vinyard v. Wilson*, a police officer was sued for excessive force when he stopped his patrol car, roughly grabbed his handcuffed prisoner, pulled her by the hair, and then sprayed her in the face with pepper spray. 311 F.3d 1340, 1343-44 (11th Cir. 2002). Factors determining whether such use of force is constitutional include the severity of the crime, whether the suspect poses an immediate threat to safety, and whether she is actively resisting arrest. *Graham v. Connor*, 490 U.S. 386, 396 (1989). In *Vinyard*, the Eleventh Circuit ruled in the plaintiff's favor and found

the factors from *Graham* heavily favored the plaintiff because she was "under arrest for offenses of minor severity, handcuffed, secured in the back of a patrol car, and posing no threat to [the officer], herself or the public." *Vinyard*, 311 F.3d at 1348-49. Similarly, Marshall was handcuffed, posed no threat to Defendants, and had been arrested for a minor offense. Additionally, Marshall was not posing a threat when West threw him on the ground face first.

While Defendant Hutson's actions did not rise to the level of West's, he is not excused because he participated in the entire encounter without any determination of probable cause. When asked about their purpose for pulling Marshall over Hutson stated "I don't know. Whatever Lieutenant West told you his probable cause was for stopping him." (Hutson Dep. 15:15-19.) Hutson further testified that he did not see probable cause, was not looking for probable cause, and any such determination was made solely by West. (Hutson Dep. 15:20-16:21.) Thus, while West was running Marshall off the road, shooting at him, manhandling, and arresting him, Hutson acted as wing man without an inkling of probable cause and apparently without questioning or voicing any reservations to West. Additionally, Hutson held Marshall and gun point and participated in his arrest.

Unfortunately for Hutson, there is no "just following orders" defense. *O'Rourke v. Hayes*, 378 F.3d 1201, 1210 n.5 (11th Cir. 2004). In *O'Rourke*, the Eleventh Circuit found that other officers' unconstitutional behavior did not relieve a defendant officer from the responsibility of deciding for himself whether to violate clearly established constitutional rights. *Id.* at 1210. The court further noted that even when the offending officer was a superior, subordinate officers may be subject to liability under § 1983 if there is a "reason why any of them should question the validity of that order." *Id.* at 1210 n.5. Here, Hudson should have

questioned West's behavior based on his belief that no probable cause existed, or he at least should have made the effort to ask.

IV. CONCLUSION

WHEREFORE, the premises considered, Plaintiff prays this Court will deny Defendants' motions for summary judgment.

RESPECTFULLY SUBMITTED on this the 12th day of March, 2008.

/s/ FRED CLEMENTS

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties or counsel, or by hand delivery, or by facsimile, or by placing a copy of the same in the United States mail, properly addressed and first-class postage prepaid on this 12th day of March, 2008.

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DEPOSITION OF RICHARD MARSHALL

November 14, 2007

Pages 1 through 156

PREPARED BY:

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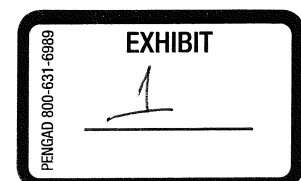
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Page 3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RICHARD MARSHALL,
Plaintiff,

vs. CIVIL ACTION NO.
2:06-cv-701-ID.CSC

CHRIS WEST, in his individual
capacity, LASHUN HUTSON, in his
individual capacity,

Defendants.

DEPOSITION OF RICHARD MARSHALL, taken

pursuant to stipulation and agreement before Lyn

Daugherty, ACCR #66, Certified Court Reporter and

Commissioner for the State of Alabama at Large, in

the Law Offices of Webb & Eley, 7475 Halcyon Pointe

Drive, Montgomery, Alabama, on Wednesday, November

14, 2007, commencing at approximately 10:00 a.m.

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11	12	Inmate property release slip	133

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STIPULATIONS

It is hereby stipulated and agreed by and between counsel representing the parties that the deposition of RICHARD MARSHALL is taken pursuant to the Federal Rules of Civil Procedure and that said deposition may be taken before Lyn Daugherty, Certified Shorthand Reporter, and Commissioner for the State of Alabama at Large, without the formality of a commission, that objections to questions other than objections as to the form of the question need not be made at this time but may be reserved for a ruling at such time as the said deposition may be offered in evidence or used for any other purpose by either party provided for by the Statute.

It is further stipulated and agreed by and between counsel representing the parties in this case that the filing of said deposition is hereby waived and may be introduced at the trial of this case or used in any other manner by either party hereto provided for by the Statute regardless of the waiving of the filing of the same.

It is further stipulated and agreed by and

Page 5

1 between the parties hereto and the witness that the
2 signature of the witness to this deposition is
3 hereby waived.

4 * * * * *

5 RICHARD MARSHALL

6 The witness, after having first been duly sworn
7 to speak the truth, the whole truth and nothing but
8 the truth testified as follows:

9 EXAMINATION

10 BY MR. WILFORD:

11 Q. Would you please state your name for the
12 record, sir.

13 A. Richard Marshall.

14 Q. Mr. Marshall, my name is Gary Wilford, and
15 together with Daryl Masters, who is also
16 here in the room, we're representing the
17 defendants that you have sued in this
18 case -- well, excuse me -- one of the
19 defendants that you've sued in this case,
20 Chris West. Where do you live?

21 A. Lowndes County, Farmersville.

22 Q. How long have you lived there?

23 A. Basically all my life.

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1 Q. Have you ever given a deposition before?

2 A. No, sir.

3 Q. Let me cover just a few ground rules here.

4 As you can see, we've got a court reporter,
5 and one of the things that she's doing is
6 she's taking down everything that we're
7 saying in the room here today; okay? And
8 I'm going to be asking you some questions
9 and you're going to be answering those
10 questions for me. And when you do that,
11 because we've got the court reporter here,
12 there's a couple of things we need to keep
13 in mind. The first thing is let's try not
14 to talk over the top of each other because
15 it makes it difficult for her to get a good
16 transcription down. Wait for me to ask my
17 question completely and then go ahead and
18 give me a verbal response. And by that I
19 mean a yes, no, or whatever it may be.
20 Shaking your head and saying huh-uh and
21 uh-huh as we tend to do in normal
22 conversation is, again, one of those things
23 that's kind of hard for the court reporter

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1 to get down. If I ask a question that you
2 don't understand, please let me know and
3 I'll be happy to rephrase it, try to put it
4 another way so that you know exactly what
5 it is that I'm asking you; all right?

6 A. Okay.

7 Q. Because when I ask you a question and you
8 give me an answer, I'm expecting that you
9 understood my question. Can we have that
10 understanding?

11 A. Okay.

12 Q. This isn't an inquisition. If you need a
13 break, if you need to talk to your lawyer,
14 get something to drink, whatever the case
15 may be, let me know and we can take a
16 break; all right?

17 A. Okay.

18 Q. And we'll probably do it on our end once or
19 twice as well.

20 A. All right.

21 Q. Other than your lawyers, who are with you
22 here today, have you spoken with anyone to
23 prepare for your deposition today?

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1 A. No, sir.

2 Q. I noticed when you came in this morning I
3 saw you and Mr. Carmichael walking up
4 together. Did y'all ride in together
5 today?

6 A. Yes, sir.

7 Q. Did y'all talk about this case on the ride
8 up?

9 A. No, sir.

10 Q. Have you ever talked to Mr. Carmichael
11 about this case?

12 A. No, sir.

13 Q. At any time?

14 A. No, sir.

15 Q. Are you related to Mr. Carmichael?

16 A. Yes. My cousin.

17 Q. Cousin?

18 A. (Witness nods head).

19 Q. Did you review any documents in preparing
20 for your deposition today?

21 A. Not today, but I have -- through my lawyer
22 I have.

23 Q. To prepare for this deposition?

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1 A. Not to prepare for the deposition, but for
2 the case.
3 Q. What documents did you review?
4 A. Just basically disclosure, whatever from
5 the other party.
6 Q. The information that we gave you?
7 A. Yeah.
8 Q. Anything that you provided your attorneys,
9 any documents you provided your attorneys?
10 A. None other than what y'all requested.
11 Q. What's your date of birth, sir?
12 A. 2/24/74.
13 Q. And how old does that make you? I'm not
14 very good at math.
15 A. 33.
16 Q. Where were you born?
17 A. Lowndes County. Well, Farmersville through
18 the -- what did they call it back then?
19 Housewife? Selma Hospital is where I was
20 taken. I was born at home.
21 Q. With a midwife?
22 A. Midwife, yeah.
23 Q. Okay. I got you.

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1 Are you married?
2 A. No, sir.
3 Q. Have you ever been married?
4 A. Yes, sir.
5 Q. How many times have you been married?
6 A. Once.
7 Q. And who were you married to?
8 A. Stephanie Mallory.
9 Q. When were y'all married?
10 A. In '97. May, I think.
11 Q. How long did y'all stay married?
12 A. Well, the divorce hasn't been finalized.
13 Q. So technically you're still married to her;
14 is that right?
15 A. Yes.
16 Q. When did y'all file for divorce?
17 A. Well, she was in the service. She was
18 really supposed to be handling that. And I
19 haven't really been in contact with her
20 over the years. Just hasn't been
21 finalized.
22 Q. When was the last time that y'all lived
23 together?

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1 A. We never actually lived together. She was
2 in the service at the time. Never shared a
3 residence.
4 Q. All right. Do you work now, sir?
5 A. No, sir.
6 Q. What was the last job that you held?
7 A. M & M Logging last -- I think I was laid
8 off January of last year.
9 Q. January of '06?
10 A. Yes, sir.
11 Q. How long did you work for them?
12 A. I think I was employed around August '05,
13 somewhere August '05.
14 Q. And worked with them until January of '06?
15 A. Yes, sir.
16 Q. What did you do for them?
17 A. I was a topper. Operate power saw.
18 Q. How much did you get paid there?
19 A. I was making \$10 an hour.
20 Q. Who was your supervisor?
21 A. David Matthews.
22 Q. Did you work prior to August of '05?
23 A. The last job before that was Alabama

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1 Power. I got laid off in '04.
2 Q. Do you remember about what month that was?
3 A. January.
4 Q. January is not a good month for you, huh?
5 A. Well, you know, it was shutdown jobs.
6 Contract's up. Layoff time.
7 Q. How long did you work for Alabama Power?
8 A. I started December the previous year. That
9 would be '03, December '03.
10 Q. So that was only about a two-month temp
11 job? Is that about right?
12 A. Somewhere around there. I caught the end
13 part of the contract. I worked through my
14 uncle. He was the supervisor.
15 Q. Who was your uncle?
16 A. Curtis Marshall.
17 Q. Prior to December of '03, when was the last
18 time that you worked?
19 A. I have to say it would have to be Big Lots
20 in Montgomery. I think that's what ...
21 Q. When did you start working for Big Lots?
22 A. I would say September of '99.
23 Q. And you worked for them until when?

Page 13

1 A. I want to say November -- I think it was
 2 November 2000, somewhere along in there.
 3 Q. What did you do for Big Lots?
 4 A. Forklift operator.
 5 Q. Forklift operator?
 6 A. Yeah.
 7 Q. And what did you do for Alabama Power? Let
 8 me go back to that.
 9 A. I was a cement finisher helper. Mixed
 10 mortar, poured concrete.
 11 Q. And what did you get paid when you were at
 12 Alabama Power?
 13 A. I was making 15.50, something like that.
 14 Q. What was your rate of pay at Big Lots?
 15 A. Start pay was 7.50 and end off at like \$10.
 16 Q. Have you ever owned your own business?
 17 A. No, sir.
 18 Q. Never been self-employed?
 19 A. Not really. Well, I contract barber, a
 20 trade of mine, hair cutting. But I never
 21 owned my own business.
 22 Q. When did you do that?
 23 A. '93 out of high school a couple of years

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1 off and on.
 2 Q. Did you graduate from high school?
 3 A. Yes, sir.
 4 Q. What high school did you graduate from?
 5 A. Central High, Hayneville.
 6 Q. What year did you graduate?
 7 A. '92.
 8 Q. Have you ever attended a college?
 9 A. Briefly J.P. Tech for barbering. But I
 10 found out I have to have a license to cut
 11 hair. Went straight to the barber shop.
 12 Q. And that was here in Montgomery; right?
 13 A. Yeah.
 14 Q. When did you attend J.P. Tech?
 15 A. I think it was '93.
 16 Q. Any other college or trade school that you
 17 have?
 18 A. No, sir.
 19 Q. Now, you live at 64 Youngblood Road in
 20 Farmersville; is that right?
 21 A. Yes, sir.
 22 Q. And how long did you tell me that you've
 23 lived there? You said you've lived in

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1 Lowndes County pretty much all your life.
 2 How long have you lived at that address?
 3 A. That's my mother's address. Most all my
 4 life I stayed next door with my grandmother
 5 most of my life until I moved out with a
 6 friend or two.
 7 Q. Where were you living in 2005?
 8 A. Still Lowndes County off of Highway 21 with
 9 a friend.
 10 Q. The whole year?
 11 A. Yeah. Yeah.
 12 Q. What's the address at your grandmother's
 13 house that you said is next door?
 14 A. It's probably going to be -- Probably --
 15 I'm not sure. The address has changed. It
 16 used to be Route 2, Box 140, but I'm not
 17 sure. I'm not sure right now. I know
 18 that's the old address, Route 2, Box 140.
 19 Q. Do you have any children, Mr. Marshall?
 20 A. Yes.
 21 Q. How many children do you have?
 22 A. Two boys.
 23 Q. Are any of them 19 or older?

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1 A. No, sir.
 2 Q. Do you have a lot of relatives in Lowndes
 3 County?
 4 A. Fairly, but not a lot. Close relatives.
 5 MR. WILFORD: Jay, can we get a
 6 stipulation, just for the
 7 venire information, that he'll
 8 give us a list of relatives in
 9 the middle district?
 10 MR. LEWIS: Sure.
 11 MR. WILFORD: That will save us
 12 some time.
 13 Q. Are you a member of a trade union?
 14 A. No, sir.
 15 Q. Do you go to church?
 16 A. I used to. I haven't been in a while.
 17 Q. When you went to church, what church did
 18 you attend?
 19 A. First Baptist in Farmersville.
 20 Q. Are you a member of any social
 21 organizations like, you know, Elks, VFW,
 22 anything like that?
 23 A. No, sir.

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1 Q. Other than this lawsuit that we're here on
 2 today, have you ever been a party in any
 3 other lawsuit either as a plaintiff or a
 4 defendant?
 5 A. No, sir.
 6 Q. So this is your first one?
 7 A. Yes.
 8 Q. We had asked you in the interrogatories if
 9 you had ever been arrested before, and you
 10 gave us three arrests; one in April 25th --
 11 25 of '97 in Butler County, the second one
 12 was the one that we're here -- I'm sorry --
 13 the second one was in '98 in Tuscaloosa,
 14 and the third one was the one that we're on
 15 here today. Do you have any other arrests
 16 besides those?
 17 A. No, sir.
 18 (Defendant's Exhibit 1 was marked
 19 for identification.)
 20 Q. Let me show you what I'm going to mark as
 21 Defendant's Exhibit 1. Let me give you
 22 just a minute to take a look at that,
 23 Mr. Marshall.

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1 (Brief pause.)
 2 Q. Have you had a chance to take a look at
 3 that?
 4 A. Yeah.
 5 Q. Does that refresh your recollection as to
 6 any other arrests you might have had?
 7 A. Yeah. I forgot about that. Seat belt,
 8 whatever it was. I think it was June -- I
 9 want to say June.
 10 Q. June of this year?
 11 A. Yeah.
 12 Q. Were you actually incarcerated as a result
 13 of that arrest? Put in jail?
 14 A. Yeah. I was taken in for three days, but I
 15 got a chance to talk to the judge. It was
 16 a miss -- following the incident we're here
 17 now on. They suspended my license for a
 18 ticket that I already sat out while I was
 19 in there. She took the ticket up plus the
 20 ticket that they wrote me that day and
 21 released me.
 22 Q. So you spent two days in jail on this
 23 charge and then the judge dismissed all the

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1 charges?
 2 A. Yes.
 3 Q. Is that what you're telling me?
 4 A. Yeah.
 5 Q. Do you remember who it was that arrested
 6 you on this June of '07 arrest?
 7 A. The officer -- my first time seeing him.
 8 But they did call Shawn Hutson up. When
 9 they ran my name, he was the first officer
 10 pulled up. So they pulled him up and they
 11 took me in.
 12 Q. Oh, you're saying Shawn Hutson came to
 13 the --
 14 A. Yes, sir.
 15 Q. -- to the stop?
 16 A. Yep.
 17 Q. But he wasn't the one who originally pulled
 18 you over; correct?
 19 A. He didn't pull me over.
 20 Q. Do you remember what department that
 21 officer might have worked from, the one who
 22 originally pulled you over?
 23 A. Oh, it was Lowndes County.

Page 20

1 Q. Was it the DTF?
 2 A. Just a regular city cop, whatever.
 3 Q. City or county?
 4 A. County, city. I mean, I don't exactly know
 5 which one it was.
 6 Q. Do you remember what color uniform the
 7 officer wore?
 8 A. I want to say dark-colored, dark-colored
 9 uniforms. May be county. In a white
 10 vehicle.
 11 Q. All right. Other than this one and the
 12 three that you told us about in the
 13 interrogatories, any other arrests?
 14 A. No.
 15 Q. On the first arrest in April of '97, did
 16 you have to spend any time in jail on that
 17 one?
 18 A. '97, yeah.
 19 Q. How long did you spend in jail on that one?
 20 A. Approximately two or three weeks before the
 21 charge was dropped.
 22 Q. Do you know why the charges were dismissed?
 23 A. Yeah. It was bogus charges. It was a

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1 misunderstanding between me and my kids'
 2 mom. She went down there to make false
 3 statements about a vehicle we purchased
 4 together, and two or three weeks later she
 5 came to an agreement and dropped the
 6 charge.
 7 Q. You say your kids' mom. Is that the lady
 8 that you're currently married to?
 9 A. No, sir.
 10 Q. What was that lady's name?
 11 A. Which one?
 12 Q. The mother of your children.
 13 A. Shavonne Bailey.
 14 Q. Do you know where she lives now?
 15 A. Tuscaloosa.
 16 Q. Was she the one that was involved in the
 17 arrest in Tuscaloosa in '98?
 18 A. Yes, sir.
 19 Q. Do you have an address on Ms. Bailey?
 20 A. Not off the top of my head, but I have it.
 21 I have an address, but I don't know it by
 22 heart.
 23 Q. Do you know her phone number?

Page 22

1 A. I don't know it by heart either.
 2 Q. When was the last time you talked to her?
 3 A. Last month.
 4 Q. Did you spend any time in jail in
 5 Tuscaloosa?
 6 A. Overnight.
 7 Q. Just overnight?
 8 A. Yeah.
 9 Q. That was in Tuscaloosa City Jail?
 10 A. Yeah.
 11 Q. Or the county jail?
 12 A. I'm not sure. I'd have to look at the
 13 paper and see. It's been a while.
 14 Q. The arrest in Butler County, were you in
 15 the Butler County Jail? It says you were
 16 arrested by the Butler City Police
 17 Department.
 18 A. Well, they only have one jail. I don't
 19 know whether it's under the city or the
 20 county. It's the only one they have --
 21 still have.
 22 Q. All right. And you've been in the Lowndes
 23 County jail twice; is that correct?

Page 23

1 A. Yes, sir.
 2 Q. Any other times that you've been in jail
 3 that we haven't talked about?
 4 A. No, sir.
 5 Q. Have you ever been treated for alcohol or
 6 drug addiction?
 7 A. No, sir.
 8 Q. Ever been treated for mental illness?
 9 A. No, sir.
 10 Q. All right. Let me draw your attention to
 11 the day that this incident that this
 12 lawsuit is about occurred. Would you agree
 13 with me that that was June 28th of 2005?
 14 A. I would agree.
 15 Q. Do you recall what day of the week that
 16 was?
 17 A. I think it was Tuesday.
 18 Q. You weren't employed on June 28th of '05,
 19 were you?
 20 A. No, sir.
 21 Q. What did you have to do that day, if
 22 anything?
 23 A. Early that morning I went to my aunt's

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1 house and we pulled the motor and
 2 transmission out of a vehicle.
 3 Q. You said we. Who is we?
 4 A. Me and Kevin and two more cousins.
 5 Q. Kevin Carmichael?
 6 A. Yes, sir.
 7 Q. Who were the other two cousins?
 8 A. Darrell Howard, Charles Howard.
 9 Q. And you said you were pulling a motor out
 10 of a car?
 11 A. Yeah.
 12 Q. Was it your aunt's car?
 13 A. No. It was my cousin's car.
 14 Q. Were you being paid to do that?
 15 A. No.
 16 Q. What time did you get up to go pull that
 17 motor?
 18 A. Probably about eight o'clock.
 19 Q. Did you have anything to eat when you woke
 20 up?
 21 A. No, sir.
 22 Q. Just went straight over there and started
 23 working on a motor?

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1 A. (Witness nods head).
 2 Q. Did y'all eat anything while you were over
 3 there?
 4 A. No, sir.
 5 Q. Did you have anything alcoholic to drink
 6 while y'all were working on that motor?
 7 A. No, sir.
 8 Q. Take any drugs that day?
 9 A. No, sir.
 10 Q. Prescription drugs?
 11 A. No drugs.
 12 Q. Where is your aunt's house at?
 13 A. It's in Farmersville also.
 14 Q. What's the address there?
 15 A. I don't know the address right off the top
 16 of my head.
 17 Q. How far is it from your house?
 18 A. Approximately a mile.
 19 Q. So did you get that motor out that day?
 20 A. Yes, sir.
 21 Q. How were you dressed?
 22 A. T-shirt and shorts.
 23 Q. Pretty hot that day?

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1 A. Yeah. It was a pretty hot summer. It was
 2 warm that day.
 3 Q. How long did it take y'all to get that
 4 motor out?
 5 A. I think we finished up sometime between
 6 11:30 -- sometime before noon.
 7 Q. What were you going to do after that?
 8 A. Go home and take a bath and get some rest.
 9 Q. And was that -- When you say going home,
 10 was that the 64 Youngblood Road address?
 11 A. No. That's the residence off of 21 where I
 12 was residing at the time.
 13 Q. Off of Highway 21?
 14 A. Yes, sir.
 15 Q. Is that on County Road 7?
 16 A. Off of County Road 7, right off of the
 17 State Highway 21.
 18 Q. Is that at the intersection of County Road
 19 7 and Highway 21?
 20 A. Yeah.
 21 Q. Where did Mr. Howard -- well, the two
 22 Mr. Howards, Darrell and Charles, go after
 23 y'all got done with that engine?

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1 A. They was at their house where we took it
 2 out. That's his mother.
 3 Q. So they didn't go anywhere?
 4 A. They were home already.
 5 Q. Did you have any plans for the rest of the
 6 day other than just going home?
 7 A. No plans.
 8 Q. Was there anybody in the car with you when
 9 you went home?
 10 A. Kevin Carmichael.
 11 Q. Did you stop anywhere between your aunt's
 12 house and where your encounter with the
 13 defendants began?
 14 A. No, sir.
 15 Q. Can you describe for me the vehicle that
 16 you were in?
 17 A. 1971 blue Nova.
 18 Q. '71?
 19 A. Yes, sir.
 20 Q. That's a Chevrolet; right?
 21 A. Yes.
 22 Q. Was that your car?
 23 A. Yes.

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1 Q. How long had you had that car?
 2 A. I think I purchased it in July of '04.
 3 (Defendant's Exhibit 2 was marked
 4 for identification.)
 5 Q. Let me show you what we'll mark as
 6 Defendant's Exhibit 2 after your attorneys
 7 get a chance to look at it. Is that your
 8 car?
 9 A. That's my car.
 10 Q. That's in Defendant's Exhibit 2?
 11 A. That's it.
 12 Q. Who all besides you had access to that car?
 13 A. No one.
 14 Q. So you had the only set of keys; correct?
 15 A. That's correct.
 16 Q. Had you loaned it to anyone recently?
 17 A. No, sir.
 18 Q. I'm sorry?
 19 A. No, sir.
 20 Q. Was that car equipped with seat belts?
 21 A. Yes, sir.
 22 Q. Were you wearing your seat belt that day?
 23 A. No, sir.

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1 Q. What about Kevin, was he wearing his?
 2 A. No.
 3 Q. Was there any alcohol in that car?
 4 A. No, sir.
 5 (Defendant's Exhibit 3 was marked
 6 for identification.)
 7 Q. Let me show you what we're going to mark as
 8 Defendant's Exhibit 3. Let me ask you,
 9 does that look like the front seat of your
 10 car on June 28th, 2005, Defendant's Exhibit
 11 3?
 12 A. That's it.
 13 Q. Fairly and accurately depict what was on
 14 the front seat of your car that day?
 15 A. Yes, sir.
 16 Q. What was in that flask that's there on the
 17 seat next to the gun?
 18 A. At one time it had contained alcohol, but
 19 it was no alcohol in it that day.
 20 Q. Well, what was in it when it was -- What
 21 was the alcohol that was in there?
 22 A. Vodka.
 23 Q. When did you drink that -- or did you --

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1 let me back up. Did you drink that?
 2 A. It's been in there for some while.
 3 Probably a week prior when I had a drink.
 4 Q. So you had emptied it about a week prior;
 5 is that right?
 6 A. Yeah.
 7 Q. Now, Defendant's Exhibit 3 also has a gun
 8 in that picture; correct?
 9 A. Uh-huh (positive response).
 10 Q. Was that your gun?
 11 A. No, sir.
 12 Q. But you knew it was in the car that day;
 13 right?
 14 A. Yes, sir.
 15 Q. Whose gun is it?
 16 A. It belongs to D.C. McWilliams.
 17 Q. Who is D.C. McWilliams?
 18 A. A friend of mine.
 19 Q. How did it get in the car?
 20 A. Well, he left it in there. One day I give
 21 him a ride when he was having car trouble.
 22 It was starting to rain. He came along and
 23 said he wanted to go back and get his gun

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1 and his books. And I give him a ride home
 2 right before dark. It started raining even
 3 harder before we got there. When I pulled
 4 up in his driveway, he jumped out of the
 5 car and left the gun.
 6 Q. How long ago before -- Let me back up and
 7 regroup. How long before June 28th, 2005
 8 did you give Mr. McWilliams a ride?
 9 A. Approximately three or four days earlier
 10 than that.
 11 Q. Where does Mr. McWilliams live?
 12 A. Right off of Highway 21.
 13 Q. Do you know the address?
 14 A. Not right offhand.
 15 Q. How far is it from your house?
 16 A. Approximately three or four miles.
 17 (Defendant's Exhibit 4 was marked
 18 for identification.)
 19 Q. Let me show you what we'll mark as
 20 Defendant's Exhibit 4. Does that look like
 21 the ashtray that was in your Nova?
 22 A. It is.
 23 Q. And you can see in there there's some

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1 bullets in there; right?
 2 A. Yes, sir.
 3 Q. Why were those bullets in your ashtray?
 4 A. Like I said, he left the box of bullets in
 5 there which had got wet from the rain. The
 6 box was deteriorating, therefore tearing
 7 up. So I took the bullets, put them in the
 8 ashtray. And there probably was some on
 9 the seat also because all of them couldn't
 10 fit in there.
 11 Q. If you look back at Defendant's 3,
 12 I believe it is, I think you're right.
 13 There is a bullet lying there on the seat,
 14 isn't there?
 15 A. Yeah.
 16 Q. So he left the gun and a box of bullets in
 17 your car?
 18 A. Yes, sir.
 19 Q. And he left it there for three to four
 20 days?
 21 A. That's approximately how long it was.
 22 Q. Had he tried to get ahold of you to get his
 23 gun and his bullets back prior to that

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1 time?
 2 A. He may have, but I was in and out of my
 3 residence probably and missed him. I even
 4 called him, but I couldn't get up with him.
 5 Q. Does Mr. McWilliams still live there off
 6 Highway 21?
 7 A. I'm certain he does.
 8 Q. Did you have a concealed weapon permit?
 9 A. No, sir.
 10 Q. Had you ever had a concealed weapon permit?
 11 A. No, sir.
 12 Q. How much money did you have on you that
 13 day?
 14 A. 500.
 15 Q. Exactly 500?
 16 A. Yes, sir.
 17 Q. In what denomination were the bills?
 18 A. I know two \$100 bills and the rest were
 19 twenties.
 20 Q. Where did that money come from?
 21 A. I previously was drawing unemployment when
 22 I got laid off from one job and I saved
 23 money. And during that time I was having a

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1 fairly decent streak at the gambling
 2 casinos. During the time I won a
 3 substantial amount of money.
 4 Q. Which casino?
 5 A. White Hall Gaming Casino. Also Biloxi,
 6 Mississippi I won some money.
 7 Q. Which casino in Biloxi?
 8 A. I'm not sure right offhand. I'd have to
 9 check receipts or something. I don't want
 10 to say the wrong one.
 11 Q. When did you win that money?
 12 A. I won the money in Mississippi in '04. The
 13 month I'm not exactly -- I'm not sure of
 14 the month. I won money in White Hall in
 15 '05, March.
 16 Q. Well, how much did you win in Biloxi?
 17 A. About 1600.
 18 Q. And how much at White Hall?
 19 A. 3600.
 20 Q. And you're saying that this money was
 21 left -- what was left of your winnings? Am
 22 I understanding you correctly?
 23 A. Yeah.

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1 Q. Did you report those winnings on your
 2 income tax?
 3 A. I took a waiver out -- tax waiver out each
 4 time.
 5 Q. Tax waiver. You have to explain that to me
 6 because I'm not a gambler.
 7 A. When you have to sign to have your taxes
 8 taken out of winnings to report your W-2s
 9 from the casino.
 10 Q. Right. Okay. But when you filed your
 11 income tax at the end of the year, did you
 12 report that income?
 13 A. I haven't filed but once since '05. I
 14 think child support ended up being on
 15 that. I'm not sure if I had it in there or
 16 not.
 17 Q. Where was that money at?
 18 A. What money?
 19 Q. The \$500 that we're talking about. That's
 20 a good point. When I ask a bad question,
 21 you go right ahead and ask me to clarify.
 22 I'm talking about the \$500 now. Where did
 23 you have that at?

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1 A. In my short right-hand pocket.
 2 Q. Was it in a wallet, or how were you
 3 carrying it?
 4 A. Just together folded.
 5 Q. When was the first time that you remember
 6 seeing the two officers that you ran into
 7 later that day?
 8 A. The first time that I seen two unknown
 9 persons was on County Road 7 immediately
 10 coming from my aunt's house.
 11 Q. That's good. Let's back up and regroup on
 12 that just a minute. Did you turn off of
 13 Highway 21 going down County Road 7 to your
 14 house?
 15 A. I turned off of Highway 16 onto County Road
 16 7 where I met the officers.
 17 (Defendant's Exhibit 5 was marked
 18 for identification.)
 19 Q. Just so I'm clear, I'm going to show you
 20 what we're going to mark as Defendant's
 21 Exhibit 5, which I'll tell you is just a
 22 little map that I got off the Internet of
 23 the area. Kind of centered in it is County

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1 Road 7 and Highway 21 and we'll just kind
 2 of refer to that. Now, you said you came
 3 off -- was it County Road 16 and onto --
 4 I'm sorry. Let me move all this stuff out
 5 of your way. I don't see County Road 16 on
 6 that map, and I might not have it zoomed in
 7 in enough detail.
 8 A. Well, it's -- the road coming from
 9 Farmersville I think leads to be County
 10 Road 16 and then you make a right on County
 11 Road 7.
 12 Q. There's Farmersville right there. So does
 13 County Road 16 kind of come --
 14 A. Yeah. And you make a right onto County
 15 Road 7. Then you make another right on
 16 Highway 21.
 17 Q. I tell you what. Let me give you my pen
 18 here and if you would just kind of draw a
 19 little line there from that dot under
 20 Farmersville. Just your best guess at how
 21 County Road 16 goes into County Road 7.
 22 A. It would have to be coming from this
 23 direction and make a right on County Road

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1 7.
 2 Q. Just draw that to where it intersects into
 3 County Road 7. Just make your line go into
 4 County Road 7.
 5 A. (Witness complies).
 6 Q. There we go. That's good. And if you
 7 would, just put a 16 under that so we'll
 8 know what we're talking about.
 9 A. (Witness complies).
 10 Q. All right. Now, if you would on here just
 11 put a little X about where your house was
 12 back in June of '05.
 13 A. The residence where I was going to?
 14 Q. Yes, sir.
 15 A. Well, it's off of Highway 21. Braggs.
 16 This is 263 exit. I stayed approximately a
 17 mile or two, three miles from the 263
 18 exit. So I would have to say somewhere in
 19 here approximately.
 20 Q. Can you put a little bit larger X so when
 21 we copy that?
 22 A. (Witness complies).
 23 Q. And if you would, just write home under

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1 that.
 2 A. (Witness complies).
 3 Q. All right. So make sure I understand what
 4 you're telling me. You left Farmersville
 5 where your aunt's house was?
 6 A. Yes, sir.
 7 Q. Traveled down County Road 16?
 8 A. Uh-huh (positive response).
 9 Q. Took a right on County Road 7 from County
 10 Road 16?
 11 A. (Witness nods head).
 12 Q. Where did you first see who you later
 13 learned to be the defendants in this case?
 14 A. Approximately a quarter mile after turning
 15 on County Road 7 I met a dark-colored
 16 Lincoln Town Car, who I first thought was a
 17 drunken driver or something that slowed
 18 down, hit the brakes hard. And I didn't
 19 know who it was, so I kept driving.
 20 Q. Okay. There's a whole bunch of things I
 21 need to ask you about there. You said it
 22 was a dark-colored Lincoln Town Car?
 23 A. Yes, sir.

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1 Q. Had you ever seen that car before?
 2 A. No, sir.
 3 Q. Did it have any distinguishing features on
 4 it, like a license plate on the front or
 5 anything that stood out in your mind?
 6 A. Didn't even pay it no attention. Wasn't
 7 registering in my mind. Just another
 8 vehicle.
 9 Q. Had you passed any vehicles on County Road
 10 7 prior to seeing that dark-colored
 11 Lincoln?
 12 A. No, sir. That's the first vehicle I saw.
 13 Q. Had you passed any on County Road 16?
 14 A. No, sir.
 15 Q. So you're all alone on a road there?
 16 A. Yes, sir.
 17 Q. All right. You also said that you thought
 18 it was a drunk driver. What made you think
 19 it was a drunk driver?
 20 A. Because immediately upon meeting the car
 21 the car slammed on brakes and took a nose
 22 dive, and I thought that to be strange at
 23 the time. Looked in my rear view mirror,

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1 saw that the car was veering off to the
 2 side of the road. So I thought maybe they
 3 had a flat or something, so I kept driving.
 4 Q. You didn't see it swerving in the road as
 5 it was coming towards you; right?
 6 A. No, sir.
 7 Q. So the only thing that made you think it
 8 was a drunk driver was it slammed on the
 9 brakes and then veered off the road?
 10 A. Yes, sir.
 11 Q. Did you get a look at who was in the
 12 vehicle as it went by you?
 13 A. No, sir.
 14 Q. County Road 7 where you encountered this
 15 dark-colored Lincoln, is that a two-lane
 16 road?
 17 A. It's a small rural road, one lane.
 18 Q. One lane in each direction?
 19 A. Yeah. One lane in each direction.
 20 Q. Did you see any kind of blue lights on the
 21 vehicle when it went by you?
 22 A. There was no lights.
 23 Q. When you say no lights, no blue lights?

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1 A. Right.
 2 Q. It had headlights; right?
 3 A. I'm certain it did.
 4 Q. Had you ever seen Chris West before that
 5 day?
 6 A. No, sir.
 7 Q. How about LaShun Hutson, had you ever seen
 8 him before that day?
 9 A. No, sir.
 10 Q. Did you know of them?
 11 A. I never know of Shawn Hutson, but I have
 12 heard Chris West's name.
 13 Q. You'd heard Chris West's name prior to the
 14 28th of June of '05?
 15 A. Yes, sir.
 16 Q. What did you know about Chris West prior to
 17 June 28 of '05?
 18 A. Only that he was a law enforcement officer.
 19 Q. Do you remember who you heard that from or
 20 how you heard it?
 21 A. No, sir. Just open conversation.
 22 Q. Do you know who might have told you that?
 23 A. No one told me. Just heard it. Just heard

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1 of him.
 2 Q. Did you know he worked with the drug task
 3 force?
 4 A. No, sir.
 5 Q. Other than slamming on the brakes and
 6 veering off the road, did they do anything
 7 else unusual?
 8 A. That's all I know is right then.
 9 Q. You say right then. Did they do anything
 10 else after that?
 11 A. Yeah. Next thing I know is they was upside
 12 my car.
 13 Q. So from the time -- Let me make sure I got
 14 your testimony right. From the time you
 15 saw them slam on brakes and veer off the
 16 road until they were next to you, you
 17 didn't see them. Is that what you're
 18 telling me?
 19 A. Yes, sir.
 20 Q. Were there any cars coming behind that
 21 Lincoln that you saw?
 22 A. No, sir.
 23 Q. Okay. Now, you said they came alongside of

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1 you. How did they do that? Describe that
 2 for me.
 3 A. After seeing the car slam on brakes and,
 4 like I said, I looked in my back mirror and
 5 saw them veer off. I kept driving. Didn't
 6 know what was happening. Approximately 30
 7 seconds to a minute later they had pulled
 8 up beside me in the passing lane. All I
 9 saw was two black males in black T-shirts
 10 trying to flag me to pull over on first
 11 glance.
 12 Q. You said trying to flag you. What were
 13 they doing?
 14 A. I just seen the hand signal (indicating)
 15 and pull over.
 16 Q. Was there anything -- Let me back up. Who
 17 was doing the hand signal? Was it the
 18 passenger or the driver?
 19 A. Passenger.
 20 Q. And just kind of describe what you did a
 21 second ago. For the record you were using
 22 your right hand and kind of pushing at
 23 shoulder level off to the side?

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1 A. Yes, sir.
 2 Q. Did you later learn who the passenger was
 3 that was giving you the hand signal?
 4 A. I believe it was Shawn Hutson.
 5 Q. So Chris West was driving; is that right?
 6 A. I think he was. Had to be.
 7 Q. Was there anybody else in the car besides
 8 those two?
 9 A. No, sir.
 10 Q. Was your window up or down in your car?
 11 A. Down.
 12 Q. Does the air conditioning work in that car?
 13 A. No, sir.
 14 Q. So you had 2 by 55 air conditioning?
 15 A. I mean, wind?
 16 Q. Yeah.
 17 A. Yeah. That's it.
 18 Q. And I'm just going to start referring to
 19 them by name now. We know that based on
 20 your testimony Shawn was the passenger and
 21 Chris was the driver. Did Shawn say
 22 anything to you when he was initially
 23 giving you that hand signal?

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1 A. I really couldn't hear if he had said
 2 anything anyway. As you can see in my
 3 trunk, I had amplifiers and music that was
 4 blasting during the time. I was driving
 5 35, 40 miles per hour. All I could really
 6 see was a hand signal.
 7 Q. Well, did it look like he was trying to say
 8 something?
 9 A. I can't recollect. I can't say that
 10 because it happened so quick. Just a brief
 11 glance and that's all I looked over there.
 12 Q. Let me back up and ask you something here.
 13 In paragraph 16 of your amended complaint
 14 you alleged that you've been robbed
 15 before.
 16 A. Yes, sir.
 17 Q. How many times had you been robbed before?
 18 A. Once.
 19 Q. When was that?
 20 A. August '03.
 21 Q. Where was it?
 22 A. In Montgomery.
 23 Q. What happened?

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1 A. I was at the hotel, Peddler's Inn, and I
 2 had a guy pull a gun on me and demanded
 3 money.
 4 Q. Were you in a car or were you just
 5 walking? Where were you?
 6 A. Coming out my room -- hotel room.
 7 Q. Did he get any money off of you?
 8 A. He took some money.
 9 Q. Did you report it to the police?
 10 A. Yeah. I went in for questioning and made a
 11 statement.
 12 Q. Did they ever catch the guy who did it?
 13 A. Yes.
 14 Q. What was his name?
 15 A. I want to say Jerome Titus.
 16 Q. What happened with Mr. Titus?
 17 A. I guess they prosecuted him or whatever. I
 18 don't know the full extent.
 19 Q. Did you ever have to testify at trial?
 20 A. No. I got a letter from the DA, Ellen
 21 Brooks, saying it wasn't enough evidence or
 22 something. I don't know. It was
 23 dismissed.

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1 Q. So he wasn't convicted?
 2 A. Not to my knowledge.
 3 Q. All right. So that was the only time that
 4 you were robbed previously?
 5 A. Yes, sir.
 6 Q. Have you been robbed since?
 7 A. No, sir.
 8 Q. All right. So we got to the point where
 9 their car -- are they about even with you
 10 going down County Road 7?
 11 A. Yeah. They pulled right up beside me.
 12 Q. Going about 35, 40 miles an hour; is that
 13 right?
 14 A. Yeah. I wasn't driving fast.
 15 Q. What's the speed limit there?
 16 A. Approximately 45, 50 maybe, anywhere in
 17 that range.
 18 Q. About how long did they stay alongside of
 19 you like that?
 20 A. Approximately 10 seconds.
 21 Q. What did they do after that 10 seconds?
 22 A. They veered behind me and trailed me out to
 23 Highway 21.

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1 Q. Did they try to come up alongside of you
2 again prior to getting to Highway 21?
3 A. No, sir.
4 Q. Did you look at them in your rear view
5 mirror?
6 A. I took a glance in my rear view mirror and
7 noticed that they was riding my bumper.
8 Q. Did you see a blue light at that time?
9 A. There was no blue light.
10 Q. Could you see what the two occupants of the
11 car were doing in your rear view mirror?
12 A. No, sir. I didn't glance. Just quick
13 glance to see that they was still behind
14 me.
15 Q. Let me back up for just a second. When
16 they were alongside of you here this first
17 time, did you say anything to them?
18 A. On first glance when they pulled up, yeah,
19 I may have said -- asked them what they
20 want, not in that nice a way, though.
21 Q. Not in a nice way?
22 A. Yeah. Not in a nice way.
23 Q. Can you tell me exactly what you said?

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1 A. What the fuck y'all want.
2 Q. Did you think to turn the stereo down?
3 A. No. Because it was my first understanding
4 that it was somebody trying to rob me and
5 I'm not going to be courteous to them.
6 Q. So you couldn't hear what they were saying
7 to you; right?
8 A. No, sir.
9 Q. And you asked them what you asked them?
10 A. Yes, sir.
11 Q. And the stereo is still going the whole
12 time?
13 A. Yes, sir.
14 Q. Did it look like either one of them
15 responded when you asked them that question?
16 A. No, sir.
17 Q. Because you just glanced at them real
18 quick; right?
19 A. Yes, sir.
20 Q. All right. They trailed you all the way up
21 to Highway 21; correct?
22 A. Yes, sir.
23 Q. What did you do when you got to Highway 21?

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1 A. I turned right. Turned going toward my
2 residence.
3 Q. Turned right going towards your house?
4 A. Yes, sir.
5 Q. Which I guess on this map takes us back to
6 the west; is that right? I think this is
7 west over here on the left-hand side.
8 A. I don't know if it's west or not. All I
9 knew --
10 Q. Kind of southwest really?
11 A. I turned right on Highway 21.
12 Q. We'll go with that. You turned right on
13 Highway 21 heading towards your house. Is
14 there a stop sign there at 7 and 21?
15 A. Caution light, yield sign.
16 Q. A yield sign?
17 A. Uh-huh (positive response).
18 Q. Was there any traffic coming on Highway 21?
19 A. No, sir. I didn't see any traffic.
20 Q. Either way?
21 A. No, sir.
22 Q. What is Highway 21? Is it another
23 two-lane, one lane each way, or is it

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1 four-lane?
2 A. Two-lane, one lane each way. State
3 highway.
4 Q. Did you stop at the intersection of 7 and
5 21?
6 A. Brief caution, brake in the road at the
7 yield sign and proceeded to go right toward
8 my residence.
9 Q. Kind of a rolling stop?
10 A. Yeah. Rolling stop.
11 Q. Wheels never really came to a complete
12 rest?
13 A. No, sir.
14 Q. And you took the right going onto Highway
15 21?
16 A. Yes, sir.
17 Q. What did the Lincoln do?
18 A. Still behind me.
19 Q. It followed you out on Highway 21?
20 A. Yes, sir.
21 Q. Did you get a chance to look in your rear
22 view mirror as you were going down 21?
23 A. Well, right after turning on Highway 21 the

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1 vehicle pulled up beside me again.
 2 Q. So up again on the left-hand side of your
 3 vehicle coming in the oncoming traffic
 4 lane; is that right?
 5 A. Yes, sir.
 6 Q. How fast were you going at that time?
 7 A. Approximately 55, somewhere around there.
 8 Q. What's the speed limit on Highway 21?
 9 A. I'm quite sure it's 55.
 10 Q. And I should have asked you this before.
 11 The rest of the time that you were on
 12 County Road 7, did you stay going 35, 40
 13 miles an hour?
 14 A. Around 35, 40 miles an hour. Because they
 15 were bumper to bumper on me.
 16 Q. So you sped up a little bit?
 17 A. It was a wavy road, so I really didn't want
 18 to travel fast.
 19 Q. Well, you did speed up a little if you got
 20 up to 45; right?
 21 A. Well, like I said, I was driving around 35
 22 to 45 on County Road 7.
 23 Q. Well, were you trying to get them off your

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1 bumper at all?
 2 A. I wasn't trying to because I knew I
 3 couldn't. They was trailing my bumper.
 4 And like I said, it was a wavy road. I
 5 didn't want to hurt myself.
 6 Q. So you turned onto Highway 21 and they came
 7 up alongside of you. What happened when
 8 they came alongside of you?
 9 A. They came alongside me and I saw the same
 10 thing again, hand motion and I glanced and
 11 kept driving.
 12 Q. Was there anything in -- And you said the
 13 hand motion. Was that the passenger again,
 14 Shawn?
 15 A. Yes.
 16 Q. Could you see anything that Chris might be
 17 doing?
 18 A. I didn't have time to just lock in on him.
 19 Q. Did Shawn have anything in his hands this
 20 time when they pulled up alongside of you
 21 on 21?
 22 A. On second glance it appeared to be a weapon
 23 at a glance and kept driving.

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1 Q. Did you see anything besides the weapon?
 2 A. No, sir. I just seen the right hand.
 3 Q. I'm sorry?
 4 A. I just saw his right hand gesturing and I
 5 just kept driving.
 6 Q. Is that the only hand he had in view?
 7 A. That's the only hand I saw.
 8 Q. Did he say anything to you?
 9 A. I didn't hear him say anything if he did
 10 for the music.
 11 Q. You still had the music going?
 12 A. Yes, sir.
 13 Q. Could you tell that he was trying to say
 14 anything to you? Could you see his lips
 15 moving?
 16 A. I didn't have time to just lock on to what
 17 he was saying, lips moving, because I'm
 18 watching traffic and watch the incident.
 19 All I did is glance. When the car pulled
 20 up beside me, I glanced, put my eyes back
 21 on the highway and kept driving.
 22 Q. You just said watching traffic. Are there
 23 cars coming now?

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1 A. No cars coming, but I'm looking for a car.
 2 Q. So still y'all are the only two vehicles on
 3 the road?
 4 A. Yes, sir.
 5 Q. Describe that weapon that you saw for me.
 6 A. I can't describe it. All I know is I saw a
 7 weapon. I don't know what brand --
 8 Q. Was it a knife? A gun?
 9 A. A gun, yeah. A gun.
 10 Q. Was it black? Shiny?
 11 A. It was black.
 12 Q. Big gun? Little gun?
 13 A. I don't know. I can't lock in on the
 14 size. I glanced at the weapon I saw.
 15 Q. Was it pointed at you?
 16 A. I can't say that it was pointed at me. All
 17 I seen was a hand gesture going like to
 18 pull over or whatever.
 19 Q. He was gesturing with the gun?
 20 A. That's what I saw.
 21 Q. Did you say anything to him?
 22 A. I didn't say anything else. I was still
 23 just driving.

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1 Q. While all this was going on up to this
2 point, what's Kevin doing?
3 A. Sitting in the seat asking me, Cuz, who is
4 this trying to run us off the road? I tell
5 him I don't know; looks like somebody
6 trying to rob us; I'm not going to stop.
7 He was scared.
8 Q. Well, I understand that you were driving
9 the vehicle. Was he watching them?
10 A. He wasn't watching them. He was just aware
11 of what was going on.
12 Q. Did he tell you at some point that the
13 police were behind you?
14 A. He didn't tell me that.
15 Q. He did not tell you that?
16 A. No, sir.
17 Q. Well, did he ever tell you to pull over at
18 any time?
19 A. He didn't tell me to pull over. He's
20 asking me who is this and what they trying
21 to do. He just said, it looked like
22 they're going to run us off the road and
23 kill us if we don't pull over.

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1 (Defendant's Exhibit 6 was marked
2 for identification.)
3 Q. Let me show you what we'll mark as
4 Defendant's Exhibit 6. Let me give you
5 just a minute to look at Defendant's
6 Exhibit 6.
7 (Brief pause.)
8 Q. Had you ever seen that document before
9 today, Mr. Marshall?
10 A. I have.
11 Q. When did you get a chance to see that
12 document?
13 A. When we turned the information over.
14 Q. Those initial disclosures; is that right?
15 A. Yeah.
16 Q. Now, this is a statement that Kevin gave to
17 the police that day. And in it he says
18 that he saw that it was the police and he
19 advised you to pull over. Is it your
20 testimony that he didn't tell you to pull
21 over?
22 A. He didn't tell me to pull over, because by
23 the time we both realized it was the police

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1 we already had been spun off the road
2 before we realized who it was.
3 Q. Now, you still had the music going pretty
4 good at that time?
5 A. The music was going until Chris West turned
6 it off.
7 Q. Is it possible that you just didn't hear
8 what Kevin was saying to you because of the
9 music?
10 A. It's possible.
11 Q. All right. How long did they stay up
12 alongside of you the second time?
13 A. Still approximately 10 seconds.
14 Q. Did you see a blue light this time?
15 A. I didn't see a light.
16 Q. Did you see a badge?
17 A. I didn't see a badge either.
18 Q. And you told me before that they were
19 wearing black T-shirts. Did those black
20 T-shirts have any writing on them?
21 A. Not that I can recollect. I just seen it
22 was black T-shirts.
23 Q. What did they do after that 10 seconds of

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1 being alongside of you?
2 A. Veered back behind me and trailed me
3 approximately another mile and a half or
4 two and they started to ram the vehicle.
5 Q. Between the time that they pulled back
6 behind you and as you described the ramming
7 started, did you get a chance to look in
8 your rear view mirror at them?
9 A. I didn't look in the mirror.
10 Q. You didn't look again?
11 A. (Witness shakes head).
12 Q. So you couldn't see anything that they were
13 doing back there?
14 A. I don't know what they was doing.
15 Q. Let me back up again to the second time
16 they were beside you. I might have asked
17 you this before. If I did, I apologize.
18 Did you say anything to the passenger that
19 second time?
20 A. No, sir.
21 Q. Make any motions to him?
22 A. I don't remember making any motions. I
23 just remember glancing at him and keep

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1 driving.
 2 Q. While all this was going on, where was this
 3 gun that's in Defendant's 3?
 4 A. Laying on the seat.
 5 Q. About where it is in Defendant's 3?
 6 A. Approximately somewhere.
 7 Q. Let me show it to you again. And is
 8 that -- you can see in the left-hand side,
 9 is that the steering wheel?
 10 A. Yes, sir.
 11 Q. So it's -- is it fair to say that it's
 12 fairly close to the driver?
 13 A. Yes, sir.
 14 Q. Was that gun just out in the open like
 15 that, or was it tucked up under you
 16 somehow? How was that gun?
 17 A. It was down between the seat.
 18 Q. What do you mean down between the seat?
 19 A. Approximately somewhere around here where
 20 it wouldn't be sliding. It was laying
 21 there.
 22 Q. You're pointing to the right-hand side what
 23 looks like seat belts. Are those seat

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1 belts there?
 2 A. Yeah.
 3 Q. Those little black things on the right-hand
 4 side?
 5 A. Uh-huh (positive response).
 6 Q. So was it -- How was it in there? You've
 7 got it barrel down. Describe for me how
 8 it's in between the seats there.
 9 A. I'm certain the barrel was in there so it
 10 wouldn't be moving pointing toward the --
 11 back in the seat.
 12 Q. Did you touch the gun at any time while
 13 this pursuit was going on?
 14 A. I don't know. I probably touched it if it
 15 was moving or whatever, but I didn't reach
 16 for it or nothing.
 17 Q. Was the gun loaded?
 18 A. Yes, sir.
 19 Q. What kind of gun is that?
 20 A. .357.
 21 Q. Do you know what kind of bullets were in
 22 it?
 23 A. .357 hollow points.

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1 Q. At any time during this pursuit did you
 2 pick that gun up?
 3 A. No, sir.
 4 Q. So it's just there kind of tucked down in
 5 the seat?
 6 A. Yeah. Until they was ramming. It probably
 7 was moving when they was ramming the
 8 vehicle. That's probably about the only
 9 time I probably touched it.
 10 Q. Did the gun move at any time during the
 11 pursuit? Did it stay here until the
 12 ramming started?
 13 A. I'm quite sure it did. But when they was
 14 ramming the car, my head was jerking. I'm
 15 quite sure it was moving along with
 16 everything else on the seat.
 17 Q. Let's talk about the ramming. Describe for
 18 me what you mean when you say they rammed
 19 you.
 20 A. Like I say, after they pulled beside me for
 21 the second time, they veered back behind me
 22 approximately a mile and they started
 23 hitting -- hitting the back end of my

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1 vehicle like two or three times. Each time
 2 it was knocking the car in a wiggling
 3 motion off the highway.
 4 Q. How fast were you going at that point?
 5 A. Initially I probably was going about 55
 6 until they started ramming me and I was
 7 losing control of the car and I slowed down
 8 approximately about 35, 40 miles an hour
 9 because I didn't want the car to flip out
 10 of control.
 11 Q. What part of their car was striking your
 12 car?
 13 A. I would have to say their bumper to
 14 bumper. I wasn't aware of the ramming
 15 until I was hit.
 16 Q. Okay. Was it -- And when you say ramming,
 17 were they hitting you center on, or were
 18 they off to one side or the other? How was
 19 that?
 20 A. They were hitting me center on up until the
 21 point where they spun me out. And
 22 that's when they hit me on the driver's
 23 side bumper and spun me out of control.

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1 MR. WILFORD: Let's take a quick
2 break. We've been going for
3 an hour.
4 (Brief recess was taken.)
5 Q. Okay. When we broke, Mr. Marshall, we were
6 talking about the ramming had begun. About
7 how many times did the Lincoln come into
8 contact with your car?
9 A. First ramming I'm quite sure he rammed me
10 twice -- two or three times. Made the car
11 sort of lose control and then I regained.
12 Q. That's what I want to do. I want to take
13 them one by one so you can tell me what
14 happened each time he made contact with
15 you. The first time that he hit you, was
16 that, again, head-on his front to roughly
17 the center of your bumper; is that right?
18 A. Yes, sir.
19 Q. And how fast were you going at the time
20 when he first hit you?
21 A. I may have been going approximately 45 to
22 55 miles an hour at the first ramming.
23 Q. What did you do when you felt the impact?

1 car after the first hit, what, if anything,
2 did you do?
3 A. Continued to drive.
4 Q. Did you slow down or speed up?
5 A. Yeah. I slowed down.
6 Q. How slow did you get down to?
7 A. Probably I want to say around 30, 35 miles
8 an hour.
9 Q. Did you make any moves to pull the vehicle
10 off the road?
11 A. No.
12 Q. You said your neck got jerked around. Did
13 you come in contact with anything in the
14 car?
15 A. Not -- At that time I didn't.
16 Q. How long did you drive at 35 miles an hour
17 before something else happened?
18 A. Approximately 10 seconds and got rammed
19 again.
20 Q. So this would be ram number two; correct?
21 A. Yes, sir.
22 Q. How did he hit you that time?
23 A. Same way, bumper.

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1 A. Well, on impact it jerked my neck and for a
2 brief moment I lost control of the car like
3 swerved from the ramming. And I looked in
4 the mirror at this time to see what was
5 going on, but I still couldn't see what
6 they was doing back there. I drove
7 approximately another quarter mile.
8 Q. Hang on just a second. You said you looked
9 back in the rear view mirror. About how
10 long did you look?
11 A. Just a glance up after they rammed.
12 Q. Could you see what they were doing?
13 A. No. I couldn't make visual what they were
14 doing.
15 Q. Did you see a blue light?
16 A. No, sir.
17 Q. Did you see any badges?
18 A. No, sir.
19 COURT REPORTER: Can I stop for
20 two seconds?
21 MR. WILFORD: Sure.
22 (Brief pause.)
23 Q. All right. After you got control of the

1 Q. Center on?
2 A. Yes, sir.
3 Q. Do you have any estimate of how fast they
4 were going? Let's go back to the first
5 time he hit you. Do you have any idea how
6 fast he was going when he hit you?
7 A. I would estimate not too much faster than
8 me, because they were riding my bumper the
9 whole time.
10 Q. So he couldn't have accelerated too much
11 before he came in contact; right?
12 A. I guess not.
13 Q. What about the second time, do you have any
14 idea how fast he was going?
15 A. I can't approximate how fast he was going.
16 I just know the impact was variably the
17 same.
18 Q. Did he stay on your bumper between the
19 first and the second impact?
20 A. After the first impact I don't think he was
21 riding my bumper as close. Because like I
22 say, I sort of lost control. He probably
23 fell back a little until I regained control

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1 and then I felt the ram again.
 2 Q. About how far did he fall back?
 3 A. I can't say how far because I really didn't
 4 look back. I just know I was swerving and
 5 I'm quite sure he wasn't on my bumper while
 6 I'm swerving.
 7 Q. Right. When you did that glance into the
 8 rear view mirror, though, about where was
 9 he? Was he still back on your bumper? Had
 10 he fallen back?
 11 A. No. He had fell back approximately 20, 30
 12 yards after he first bumped me.
 13 Q. All right. So the second impact was about
 14 as hard as the first impact; right?
 15 A. Yes, sir.
 16 Q. What happened immediately after the second
 17 impact?
 18 A. Immediately after the second impact, the
 19 car veered a little more, and immediately
 20 following that that's when he bumped it
 21 again on my driver's side bumper and
 22 spun me out of control. That's when my
 23 head hit the steering wheel. I snatched

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1 the vehicle. It jumped Highway 21 and
 2 landed on the opposite side of the highway
 3 in a ditch on a spinout.
 4 Q. Okay. So you're saying that the hit where
 5 he spun you out came fairly quickly after
 6 the second ram; is that right?
 7 A. Yes, sir.
 8 Q. Were you still going about 35 miles an hour
 9 when the spinout hit occurred?
 10 A. Yes, sir. Approximately.
 11 Q. Were you able to take any kind of
 12 corrective action with the car between the
 13 time of the second hit and the spinout hit?
 14 A. After he rammed me the second time, like I
 15 say, I guess because I wasn't going as
 16 fast, the car just like jerked. And before
 17 I can regroup, he had hit me again on the
 18 bumper. And that's when I spun out
 19 toward the bluff. My head hit the steering
 20 wheel. Knowing it's a deep bluff right
 21 here, I snatched the steering wheel, and
 22 all I know the car jumped or skid across
 23 Highway 21. Because when my head came up,

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1 I was on the opposite side of the road in a
 2 daze. By the time I opened the car door
 3 they was already out of their vehicle with
 4 guns drawn.
 5 Q. Let's talk about your head hitting the
 6 steering wheel. What part of your head hit
 7 the steering while?
 8 A. My right -- left temple.
 9 Q. Right above your eye there?
 10 A. Yeah. I've still got a knot up there from
 11 it.
 12 Q. And you weren't wearing your seat belt at
 13 the time; right?
 14 A. No, sir.
 15 Q. Was that from the second hit or the spinout
 16 hit that sent your head into the steering
 17 wheel?
 18 A. Had to be the spinout, because when he hit
 19 me, it like threw me off the seat out of
 20 control and I just snatched the wheel and
 21 the car just went where it went.
 22 Q. So it went all the way across the oncoming
 23 lane; is that right?

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1 A. Yeah. It went -- When he spun me out,
 2 the car went off the bluff toward the bluff
 3 to the right of the road on two wheels. I
 4 snatched it and all I can remember is it
 5 clearing the highway or whatever. I ended
 6 on the opposite side of the road facing the
 7 way we just came.
 8 Q. So you went off to the left from your
 9 direction of travel; is that right?
 10 A. That's where --
 11 Q. Your car went to the left?
 12 A. That's where it landed.
 13 Q. Your initial direction of travel?
 14 A. Yes, sir.
 15 Q. And the stereo was still going the whole
 16 time; right?
 17 A. Whole time.
 18 Q. Between the first time that you were hit
 19 and what we're calling the spinout hit
 20 here, did Kevin say anything to you that
 21 you heard?
 22 A. No, sir.
 23 Q. Do you recall saying anything?

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1 A. I was probably mumbling to myself, they're
 2 trying to kill me, what they doing,
 3 something to that effect.
 4 Q. Did you ever think to pick up that gun and
 5 defend yourself with it?
 6 A. No, sir.
 7 Q. Did you have a cell phone with you that day?
 8 A. I'm quite sure I did.
 9 Q. Do you remember what the phone number was?
 10 A. I don't remember.
 11 Q. Did you try to call anybody?
 12 A. No, sir. I didn't have time.
 13 Q. That's a good point. From the time that
 14 you saw that Lincoln break back on County
 15 Road 7 until the time that you came to a
 16 stop on Highway 21, how much time had
 17 passed?
 18 A. If I had to estimate, I'd approximately say
 19 anywhere from five to 10 minutes.
 20 Q. Did Kevin have a cell phone?
 21 A. No, sir.
 22 Q. All right. So in that entire five- to
 23 10-minute period, you never picked up the

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1 phone to make a call?
 2 A. No, sir.
 3 Q. Never thought to call for help?
 4 A. It's a panic situation. You think you're
 5 getting robbed. You ain't got time to call
 6 for no help when I'm driving.
 7 Q. The entire time that passed between the
 8 first time that you were hit until you were
 9 spun out, were there any vehicles on the
 10 road besides yours and the Lincoln?
 11 A. I didn't meet any traffic on County Road 7,
 12 and I don't recall meeting any traffic on
 13 County Road 21 until after the incident was
 14 over.
 15 Q. Did you throw anything out the window at
 16 any time?
 17 A. The only thing I had in my hand was a
 18 cigarette butt. I was smoking previous to
 19 the whole incident. If anything was
 20 thrown, it had to be a cigarette butt
 21 because I didn't have anything else.
 22 Q. Where did you throw that cigarette butt
 23 out? Was it on County Road 7 or Highway

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1 21?
 2 A. Probably had to be on Highway 21.
 3 Q. What is this area here in this intersection
 4 of 7 and 21 like? Is it built up? Are
 5 there a lot of buildings? Is it wooded?
 6 Give me an idea of what the area around
 7 there looks like.
 8 A. This area where --
 9 Q. I tell you what. Let's start on County
 10 Road 7 from basically where you turned off
 11 on 16 up to 21. Are there any houses or
 12 churches or anything like that there?
 13 A. Well, after coming through what's called
 14 the swamp on County Road 16, swampy area,
 15 no houses. I don't know what's in the
 16 woods. No houses. Two bridges. On County
 17 Road 7 there's a church right to your
 18 left. As soon as you turn onto it there's
 19 a church.
 20 Q. At the intersection of 16 and 7?
 21 A. Yeah. That's the intersection. It's a
 22 church there. And immediately turning on
 23 County Road 7 I know there's a house and

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1 another house or two on your left. And
 2 after that --
 3 Q. Is this as you're traveling towards 21 that
 4 you're describing for me?
 5 A. Immediately turning onto County Road 7
 6 approximately a quarter mile you'll run up
 7 on a house and a trailer and approximately
 8 two houses on your left. Then it's just
 9 another wooded stretch and a bridge.
 10 Q. What about on 21 where you turned right
 11 there, what's the area like around there?
 12 A. It's a caution light. It's a big -- two
 13 big ponds and used to be a junkyard. Guy
 14 owned a big house on the hill up from the
 15 ponds and probably two older model houses
 16 on your left. Then you've got a another
 17 stretch -- bridge and stretch or whatever.
 18 Q. Any churches or anything like that around
 19 there?
 20 A. Not right there on Highway 21. Not right
 21 there.
 22 Q. Any gas stations or stores?
 23 A. Yeah. There's a store probably a quarter

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1 mile to your left from the caution light.
 2 Q. Going back towards Braggs?
 3 A. Yeah. Going back towards Braggs.
 4 Community store right there.
 5 Q. What about in the direction that you
 6 traveled on 21, are there any stores or gas
 7 stations or anything like that?
 8 A. The direction I traveled that day going
 9 home?
 10 Q. Yes, sir.
 11 A. No gas station. No store.
 12 Q. And your house is on Highway 21?
 13 A. Right off the dirt road. Turn right off of
 14 21.
 15 Q. About how far back off of 21?
 16 A. Just a couple hundred yards.
 17 Q. Are there any other houses around that one?
 18 A. Yeah. It's a couple houses right at the
 19 caution light about a quarter -- about 2,
 20 300 yards from where I live, caution light,
 21 and there's a couple more residences in the
 22 area.
 23 Q. Is that a different caution light than the

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1 one you've been telling me about on 7/21?
 2 A. Yeah.
 3 Q. So that's further on down?
 4 A. Yeah. Right down from my home there's
 5 another caution light right down there.
 6 Q. You're pointing right about where 21
 7 intersects the Lowndes/Wilcox County line.
 8 A. Yeah.
 9 Q. I'm just trying to describe for the record
 10 where you were pointing.
 11 A. Wilcox County line actually was about a
 12 mile from the --
 13 Q. From your home or from where you wound up?
 14 A. From my home.
 15 Q. How far were you from your home when you
 16 were spun out?
 17 A. Approximately a mile.
 18 Q. Did your car hit anything when it was spun
 19 out other than the Lincoln?
 20 A. Probably embankment is all I can say.
 21 Q. Didn't hit a mailbox or --
 22 A. No. It's no mailbox in the area.
 23 Q. And we showed you already Defendant's

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1 Exhibit 2. Is that where your car came to
 2 rest? Does that depict where your car came
 3 to rest after being spun out?
 4 A. Yes, sir.
 5 (Defendant's Exhibits 7 and 8 was
 6 marked for identification.)
 7 Q. I'm going to show you a couple more
 8 pictures here. I want to show you what
 9 we're going to mark as Defendant's 7 and 8
 10 and let you and your lawyers take a look at
 11 those pictures. Now, do those pictures
 12 also show the way your car wound up on
 13 Highway 21 on June 28th, 2005?
 14 A. Yes, sir.
 15 Q. And we can also see another car in
 16 Defendant's 7 and 8. Is that the Lincoln
 17 that you've been describing?
 18 A. Yes, sir.
 19 Q. Is that how the Lincoln wound up after you
 20 were spun out?
 21 A. They pulled down in the direction. They
 22 pulled off the road in front of me.
 23 Q. And then they turned around and came back;

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1 is that right?
 2 A. No. They pulled down after -- This is
 3 where I landed.
 4 Q. Right.
 5 A. And by the time my head is up off the
 6 steering wheel, my door -- they had already
 7 pulled down and standing in the doorway
 8 with guns drawn.
 9 Q. That's -- Actually you make a good point
 10 there. Let me -- Did you see what happened
 11 to the Lincoln after it made contact --
 12 made the contact with your vehicle that
 13 spun you out?
 14 A. No. Once I went spinning, I didn't see
 15 anything else until the car came to rest.
 16 And like I say, my head hit the steering
 17 wheel. I had like a daze. And when I
 18 leaned back and opened my eyes, the Lincoln
 19 was pulling down right there and they
 20 jumped out of the car with pistols drawn.
 21 I didn't have an opportunity to get out. I
 22 just opened the door and they was already
 23 up.

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- 1 Q. So you saw the Lincoln -- I want to make
2 sure I got you right. You saw the Lincoln
3 come to that position that we see it in in
4 Defendant's 7 and 8; is that right?
5 A. Yeah. I saw it pull down.
6 Q. And is that where that car was when, as you
7 described, they got out with their guns
8 drawn?
9 A. Yes, sir.
10 Q. So the two cars in 7 and 8 are where they
11 were at that time that they got out and
12 drew down on you; is that right?
13 A. Yes, sir.
14 Q. Defendant's Exhibit 7, that's the rear of
15 your car; correct?
16 A. Yes, sir.
17 Q. What is that license plate?
18 A. BRich3.
19 Q. That's a personalized plate; is that right?
20 A. Yes, sir.
21 Q. Did you select that?
22 A. Yes, sir.
23 Q. What does that mean?

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- 1 A. Just a nickname. I had the same license on
2 two other vehicles. That's just the third
3 vehicle I had purchased. I had another
4 Nova.
5 Q. So your nickname is B Rich; is that right?
6 A. Uh-huh (positive response).
7 Q. Where does that come from?
8 A. Just a nickname. Gained a little weight
9 over the years. People started calling me
10 Big Rich. I used to be a skinny guy.
11 Q. I got you. So the Rich is short for
12 Richard?
13 A. Yeah.
14 Q. I got you. So you at some point had
15 vehicles that had BRich1 and BRich2 on
16 them?
17 A. Yeah.
18 Q. When you hit your head on the steering
19 wheel, did it get cut?
20 A. No, sir. Just a knot.
21 Q. All right. You saw the Lincoln pull up to
22 where we see it on 7 and 8 and they got out
23 with guns drawn. Did both officers get out

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- 1 with guns drawn?
2 A. Yes, sir.
3 Q. You saw the guns, then, at that time?
4 A. Yes, sir.
5 Q. Now, when they got out -- and I want to
6 make sure I understood what you told me --
7 were you still inside the car or had you
8 gotten out?
9 A. No. I hadn't gotten out. When they was
10 rolling up and jumped out of the car with
11 guns, I hadn't had an opportunity to get
12 out. I had opened the door, but like I
13 say, I was in a daze. And I got out of the
14 car after that and that's when they started
15 yelling commands. At that time is where I
16 seen a shield or whatever they had hanging
17 around their neck.
18 Q. Both of them?
19 A. Well, I know I saw the passenger because he
20 was more out, which was Chris West. He was
21 on the passenger's side at this time. I
22 really couldn't see what Mr. Hutson had on.
23 Q. Chris West was on the passenger side when

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- 1 you saw him?
2 A. Yeah.
3 Q. And where was Hutson?
4 A. On the other side of the door.
5 Q. On the driver's door?
6 A. Uh-huh (positive response).
7 Q. Did you see how they got to that position?
8 Because I think you told me earlier that
9 Chris was driving.
10 A. No. I didn't say he was driving. I said
11 that they got out with their guns drawn. I
12 never said Chris was driving because Shawn
13 Hutson was on the passenger side. But all
14 I knew is when I leaned up Chris West was
15 on this side of the car because he's the
16 one that took me down. Shawn Hutson was on
17 the other door.
18 Q. Okay. I'm a bit confused here, so we've
19 got to get this right. When the car pulled
20 up alongside of you twice, it was Shawn
21 Hutson who was gesturing at you to pull
22 over; right?
23 A. Yeah.

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1 Q. And he was on the passenger's side; right?
 2 Is that right?
 3 A. I understood it to be him. I know it was a
 4 skinnier guy.
 5 Q. I understand you didn't know him at the
 6 time.
 7 A. Uh-huh (positive response).
 8 Q. And Chris and Shawn were the only two in
 9 the Lincoln; right?
 10 A. Yes, sir. The only two.
 11 Q. So doesn't that basically mean that Chris
 12 had to have been driving?
 13 A. Yeah. I guess he was driving, yeah.
 14 Q. So let me go back to my question. Did you
 15 see how it was that Chris wound up on the
 16 passenger's side of the car after you were
 17 spun out and Shawn wound up on the driver's
 18 side?
 19 A. I didn't see that, but it was Chris West
 20 that was on the passenger's side with the
 21 gun on me.
 22 Q. And you said you saw the shield on Shawn;
 23 is that right?

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1 A. Saw the shield on Chris. I really couldn't
 2 see --
 3 Q. Keep me straight. Shield on Chris. Did
 4 you get out of the car on their command or
 5 on your own?
 6 A. Well, after -- Like I say, they was already
 7 out. They may have commanded me, but I was
 8 dizzy in the head. I got out of the car
 9 and stood in the door with my hands up.
 10 And I was asking them what's going on, and
 11 they were just telling me, get on the
 12 ground, get on the ground, get on the
 13 ground.
 14 Q. So you could hear them now; right?
 15 A. Yeah. I could hear them.
 16 Q. Music still going?
 17 A. Still going.
 18 Q. But now you can hear them?
 19 A. Yeah. I'm out of the car.
 20 Q. At this time is the gun that was in your
 21 car where it is in Defendant's 3?
 22 A. Yes, sir. It was laying there.
 23 Q. Just like that?

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1 A. (Witness nods head).
 2 Q. When they told you to get on the ground,
 3 did you get on the ground?
 4 A. No, sir.
 5 Q. Why did you not get on the ground?
 6 A. Because I was agitated. I didn't know what
 7 was going on, why this was happening. But
 8 I still had my hands on top of the door
 9 letting them know I wasn't posing a threat,
 10 but I just didn't feel like getting on the
 11 ground at the time.
 12 Q. Did you say anything to them?
 13 A. I'm quite sure I did.
 14 Q. What did you say?
 15 A. Why y'all doing this, what's going on,
 16 something to that effect, what's this all
 17 about.
 18 Q. At this point you'd seen the badge on
 19 Chris; right?
 20 A. Yeah, I saw it.
 21 Q. So you knew they were police at this time;
 22 right?
 23 A. I did.

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1 Q. What did they say, if anything, when you
 2 said what you said to them?
 3 A. Shawn Hutson, he wasn't focusing on me. He
 4 didn't say anything. Chris West was just
 5 saying get on the ground. He said a couple
 6 of dirty words, too; get on the ground, get
 7 on the ground, get on the ground. And he
 8 just eased up on me and slammed me to the
 9 ground.
 10 Q. You said Shawn wasn't focused on you. What
 11 was he doing?
 12 A. He was more or less watching my cousin.
 13 Q. After y'all came to a stop, what did Kevin
 14 do?
 15 A. I really couldn't tell you what he was
 16 doing. I was focusing on them. After the
 17 car came to a stop and they drew out, my
 18 attention was on them. So I really don't
 19 know what he was doing.
 20 Q. Well, when was the next time that you
 21 became aware of what Kevin was doing?
 22 A. When Shawn Hutson came around and got him
 23 out of the car and put him in cuffs.

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1 Q. Was that before or after Chris West had
2 approached you?
3 A. He had already came along and subdued me.
4 Q. Other than commanding you to get on the
5 ground initially, did Chris or Shawn say
6 anything else?
7 A. At that time I can't recollect. Up until
8 the point where he -- Chris West put me on
9 the ground I can't recall anything they
10 said besides get down.
11 Q. Did they identify themselves, DTF or
12 sheriff's department or anything like that?
13 A. They didn't identify nothing.
14 Q. Other than the badges that they had on --
15 well, the badge that Chris had on?
16 A. The badge.
17 Q. All right. You said Chris came and
18 approached you and you were still standing
19 up at that time; right?
20 A. Yes, sir.
21 Q. What happened when he got to you?
22 A. He got to me, kick slammed me to the
23 ground.

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1 Q. Describe that for me. You say kick slammed
2 you to the ground. How did that happen?
3 A. I had my hands up right above my door. He
4 eased up on me with the gun drawn and he
5 got close enough until he grabbed me and
6 swept my feet with his feet and slammed me
7 face down on the ground. He put his foot
8 on my back and handcuffed me. Then he had
9 his foot on my neck.
10 Q. He cuffed you behind your back?
11 A. Yes, sir.
12 Q. As he was approaching you, did he say
13 anything to you?
14 A. I don't remember him saying anything but
15 just get down and he walked up on me.
16 Q. Did you say anything back to him as he was
17 coming up on you?
18 A. I didn't say anything then.
19 Q. Did you ever at any time make any move back
20 inside that car?
21 A. No, I didn't. I was standing in the car in
22 a daze and --
23 Q. You said your hands were up on top of the

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1 car. Were they on top of the --
2 A. Top of the door. I was standing in the
3 door with my hands like this (indicating)
4 so he can clearly see.
5 Q. We're going to look at Defendant's 2
6 again. You can see here you've got both
7 the driver's side front and rear door
8 open. I'm sure the driver's side rear door
9 wasn't open while all this was going on;
10 right? That was later?
11 A. Yes, sir.
12 Q. Was the front door open about like it is --
13 A. Yes.
14 Q. -- while this initial confrontation between
15 you and the officers was going on?
16 A. Yes, sir. I was standing in my doorway
17 with my hands up right here on top while
18 they was drawn and commanding me.
19 Q. Did anybody give any commands to Kevin that
20 you heard?
21 A. Like I say, I really can't recall any
22 commands being given to Kevin, because the
23 music is still loud and I'm just focusing

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1 on this gun is drawn on me and I can
2 clearly see what he's doing.
3 Q. Now, at the point from where Chris drew
4 down on you until he came up on you, you
5 got a pretty good look at him; right?
6 A. Uh-huh (positive response).
7 Q. What else did he have on him, if anything,
8 as far as on his person? Did you see any
9 equipment belt or anything like that?
10 A. Only thing I can recognize is he had on a
11 black T-shirt with the shield and he had on
12 regular short pants like I had on, tennis
13 shoes or something to that effect.
14 Q. Did you see anything on his belt?
15 A. I can't recall. I wasn't paying any
16 attention to that. All I was focusing on
17 was the gun on me.
18 Q. From the time Chris initially yelled at you
19 to get on the ground until the time that he
20 approached you and as you said foot-swept
21 you and cuffed you, did he do anything else
22 that we haven't talked about?
23 A. Not from the time he came from there and

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1 foot-swept me on the ground he didn't.
 2 Q. After you were in cuffs and on the ground,
 3 I think you told me earlier that's when
 4 they cuffed Kevin; right?
 5 A. Yes. Shawn Hutson went and pulled him out.
 6 Q. Were you able to see that --
 7 A. Yes.
 8 Q. -- from where you were?
 9 A. Yeah.
 10 Q. How were you -- Let's go back to
 11 Defendant's Exhibit 2 again. Once you were
 12 cuffed and on the ground, can you show me
 13 how you were laying by referencing
 14 Defendant's 2?
 15 A. Well, when he foot-swept me and kicked me
 16 on the ground, I was laying out toward --
 17 like in this direction headed toward this
 18 direction.
 19 Q. So you're out --
 20 A. Out from the door.
 21 Q. -- to the lower part of the picture
 22 underneath the door -- the front door?
 23 A. Out from the door, yeah.

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1 Q. Is that with your head facing back towards
 2 Highway 21?
 3 A. My head is out this way where I can see
 4 Highway 21 and I can see in my car.
 5 Q. Looking at Defendant's 2, where is the
 6 Lincoln at? Can you point for me the
 7 general direction the Lincoln was in?
 8 A. The Lincoln was still up here at the front
 9 where it was.
 10 Q. You're kind of pointing off to the
 11 left-hand side of Defendant's 2 kind of in
 12 the middle; is that right?
 13 A. Up in front of the vehicle where it was
 14 resting on the other picture. The Lincoln
 15 was still there.
 16 Q. How did Kevin get out of the car?
 17 A. Shawn Hutson pulled him out of it.
 18 Q. I understand that. But what side of the
 19 car did he come out of?
 20 A. Passenger's side.
 21 Q. So Shawn came around to the passenger's
 22 side of the car and took him out?
 23 A. Yes, sir.

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1 Q. How did he take him out? Describe that
 2 process for me.
 3 A. Only thing I can see he grabbed him and
 4 pulled him out of the car.
 5 Q. Was it through an open door or through the
 6 window?
 7 A. The door. The door was open.
 8 Q. And what did he do to him once he pulled
 9 him out of the car?
 10 A. Put him in handcuffs and set him up there
 11 on that hill.
 12 Q. Where we see him in Defendant's 7 and 8?
 13 A. Yeah.
 14 Q. Did he pretty much stay there for the rest
 15 of the time until he was taken from the
 16 scene?
 17 A. Yes, sir.
 18 Q. All right. Once Kevin was cuffed, what
 19 happened?
 20 A. Chris West got me up off the ground and put
 21 me back upside my car door. My back door
 22 wasn't open at the time. My back is
 23 against my door and in cuffs, and he

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1 started asking me, you ain't seen the
 2 badge, you ain't see this, you ain't see
 3 that. I said, man, I ain't seen nothing
 4 but the gun. He didn't like what I was
 5 saying, so he grabbed my pants and he
 6 shoved me against the car. I said, man,
 7 what you doing. He started going in my
 8 pockets. I know he took my wallet out. I
 9 didn't even see him take the money out. He
 10 took my wallet out, open it up, throw it
 11 inside my car on the seat.
 12 Q. Which seat? The back seat or the front
 13 seat?
 14 A. It was on the front seat.
 15 Q. Did we see your wallet in any of these
 16 pictures?
 17 A. I didn't see it.
 18 Q. So he searched your pants?
 19 A. Yeah. He put his hands in all my pockets
 20 and he came out with the wallet and looked
 21 in it. And like I say, I didn't see him
 22 come out with the money. But I was still
 23 standing there. He was raving on about why

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1 I ain't stopped, this and that. I told him
 2 I didn't know who he was; I thought you was
 3 somebody trying to rob me. You know who I
 4 was, this and that back and forth.
 5 Q. Let me stop you right there. Other than
 6 your wallet -- You said you didn't see him
 7 take the money out?
 8 A. I didn't see him take it out, but he put
 9 his hand in the pocket where my money was.
 10 I didn't see him take it out.
 11 Q. Did he take anything else out of your
 12 pockets?
 13 A. Just my wallet in my sight. I saw him take
 14 the wallet out and go through it and throw
 15 it down.
 16 Q. Did he search any other part of your person
 17 other than the pockets of your pants?
 18 A. He had -- Like I say, he had his hands
 19 verbally in -- like in the belt part of my
 20 pants and pulled them first like shoved me
 21 against the car. Then he started searching
 22 me. After that he went to the trunk of the
 23 car and started tearing it up, opening it

1 whatever. Shawn was more or less over by
 2 the vehicle.
 3 Q. I'm just focusing on the time right now
 4 while Chris was searching your person, not
 5 the vehicle yet. Was Shawn standing
 6 nearby?
 7 A. I can't recollect where he was then. I
 8 know he had got Kevin out of the car and he
 9 wasn't in our immediate space.
 10 Q. All right. Once he got done -- Once Chris
 11 got done searching you, what did he do with
 12 you, if anything?
 13 A. I was standing right there, as I say, in my
 14 car door. The passenger rear door is still
 15 closed. He wanted me to get in the back
 16 seat of the car. I said, man, you see this
 17 tight space; I can't get in there with my
 18 handcuffs on; I'm a big guy; I can't get in
 19 there. He got mad and grabbed me inside my
 20 pants and rammed me against the car and he
 21 snatched me back. That's when my pants hit
 22 the ground off my leg because he busted the
 23 zipper and the button. My pants was on the

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1 up.
 2 Q. Okay. About how long did his search of
 3 your person take?
 4 A. I would approximately say 10 minutes.
 5 Q. 10 minutes?
 6 A. Approximately. Because he went through the
 7 trunk and everything.
 8 Q. I'm just talking about your person.
 9 A. Oh, me?
 10 Q. Yeah. Your person.
 11 A. Couple of minutes. Couple of minutes.
 12 Q. While this was going on, were you able to
 13 see or hear what was going on with Kevin?
 14 A. No. I ain't heard -- As far as I know,
 15 Shawn had placed him over there sitting
 16 down. He wasn't going nowhere.
 17 Q. Was Shawn present while you were being
 18 searched by Chris West?
 19 A. Yes, sir.
 20 Q. Was he standing there?
 21 A. He was more or less out around the Lincoln
 22 Town Car around the vehicle. Chris was
 23 searching me, searching the trunk or

1 ground. I said, man, what you doing. I
 2 said, you see I can't get in there; put me
 3 in the patrol car or whatever you're going
 4 to do. You're going to get in here; such
 5 and such, such and such. So at this time
 6 cars started coming up Highway 21. He
 7 stopped doing what he's doing, went to the
 8 Lincoln Town Car, reached in there, got a
 9 light. He put the light on top of the
 10 car. The light wouldn't even work. He
 11 beat on the light three or four times
 12 before the light started flashing. That's
 13 how I was able to know there was no light
 14 present throughout the whole incident. He
 15 put the light on the car after he had did
 16 all this and I'm watching him doing this.
 17 Q. You watched him take the light out of the
 18 car and put it up on --
 19 A. I watched him reach inside the car and come
 20 out with a light. He stuck it on top of
 21 the car and he beat on it three times
 22 before it even started flashing.
 23 Q. How much did you weigh in June of '05?

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1 A. I was probably weighing about 275, 280 back
2 then.
3 Q. How tall were you?
4 A. 5-9.
5 Q. The shorts you were wearing that day, were
6 they tight on you? Baggy? Were you
7 wearing them low slung?
8 A. Just snug fit, average fit.
9 Q. Did you have a belt on?
10 A. No belt.
11 Q. You were wearing boxers underneath them; is
12 that right?
13 A. Yes, sir.
14 Q. You said the zipper broke on the shorts?
15 A. The zipper bust and the button popped off,
16 because he stuck his hands in the inside of
17 my crotch and gripped the pants and forced
18 me back in the car while I'm already in
19 cuffs. Then he choked me because I was
20 asking what he was doing. I said, man,
21 what this all about. When I wouldn't get
22 in the car -- That's what made me get in
23 the back seat of the car. He verbally

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1 choked me until I couldn't breathe, and
2 that's when I subdued and got in the back
3 seat of the car.
4 Q. Describe for me how he choked you.
5 A. Doing the motion. When he slammed me
6 against the car, I still wouldn't get in
7 the back seat of the car because I
8 couldn't -- it's a small car. I know I
9 couldn't hardly get in there. And I
10 wouldn't obey what he was doing. He said,
11 you're going to get in the back seat of
12 this car because traffic coming at the
13 time. He grabbed one hand on the back of
14 my neck some kind of full nelson choke and
15 my head was like this (indicating). You're
16 going to get in the car. That's what he
17 said. You're going to get in there. And
18 when I stopped -- couldn't breathe, I gave
19 up and crawled in the back seat of the
20 car. You see my legs are still out. I
21 couldn't get my whole body in there.
22 Q. So he had one arm in the front of your neck
23 and one arm in the back of your neck; is

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1 that right?
2 A. Full nelson, some type of chokehold.
3 That's all I know. I can't describe
4 exactly how it was. All I know I was being
5 choked. He was in front of me and he was
6 choking me. Cut my air off.
7 Q. Once you got in the car, did he stop
8 choking you?
9 A. He stopped choking me while I was still
10 standing there because I gave up
11 resisting. I told him, okay, I'll get in
12 the car because I couldn't breathe.
13 Q. So you agreed to get in the car and he
14 released his hold; is that right?
15 A. Yes.
16 Q. About how long were you in that hold?
17 A. Long enough for my breath to get cut off.
18 Q. Seconds? Minutes?
19 A. Seconds. Wasn't no minutes. Seconds.
20 Q. 10 seconds? Five seconds?
21 A. I don't know how many seconds.
22 Approximately five to 10 seconds.
23 Q. We do see you in the car in these pictures;

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1 right? Let's look at Defendant's 7. Is
2 that you in the back seat of the car there?
3 A. Yes, sir.
4 Q. And Defendant's 8, is that you in the back
5 seat of the car?
6 A. Yes, sir.
7 Q. And I think you told me he searched your
8 car too. Was that before or after he put
9 you in the back seat of your car?
10 A. I know he searched it -- the inside part
11 with me standing right here just reaching
12 in. I'm standing here. He just reached in
13 and he got the keys out during that time
14 and he went to the trunk of the car, opened
15 it with the keys and started going through
16 the trunk while I was standing there. And
17 he came back and slammed the trunk or
18 whatever and came back around.
19 Q. At some point did he find the gun?
20 A. Oh, he already saw the gun.
21 Q. Tell me when you first became aware that he
22 was aware of the gun.
23 A. After he had slammed me down on the ground

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1 and put me in cuffs they saw the gun,
 2 because they was making little smart
 3 comments about the gun on the seat and this
 4 and that.
 5 Q. Who made the comment about the gun?
 6 A. Shawn Hutson. Oh, he got a big gun; oh, it
 7 ain't no cheap gun either; all this and
 8 that. I told them it's not my gun. That's
 9 your gun? I said, it ain't my gun, man.
 10 Q. Had the radio been turned off at this
 11 point?
 12 A. Chris West turned the radio down after he
 13 put me in cuffs.
 14 Q. After he put you in cuffs?
 15 A. Yeah.
 16 Q. Is that about the same time that he found
 17 the gun?
 18 A. Yeah. He saw the gun right after he
 19 reached in the car or whatever.
 20 Q. Did he take the gun, did he move the gun,
 21 or did he just leave it right there where
 22 we see it?
 23 A. He left it right there.

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1 Q. All right. Then he did a complete search
 2 of your car; is that right?
 3 A. He went to the trunk. He already had
 4 visually searched the little front part,
 5 which is not too much concealed. He went
 6 to the trunk and that's where he did most
 7 of the searching, moving stuff doing this
 8 and that, whatever he was doing back
 9 there. He came back a little while where I
 10 was.
 11 Q. Did he bring anything with him when he came
 12 back up there where you were?
 13 A. No, sir.
 14 Q. Did he tell you that he had found anything?
 15 A. No, sir.
 16 Q. About how long did it take him to search
 17 the car?
 18 A. I'd say the whole search probably I'd say
 19 five to 10 minutes.
 20 Q. While Chris was searching the car, what was
 21 Shawn doing?
 22 A. Shawn was back toward the Lincoln Town Car
 23 and Chris made the statement about the gun

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1 or whatever. Then Shawn came over where he
 2 was and they were making little small talk
 3 about the caliber and the model of the gun
 4 or whatever, this and that.
 5 Q. Any other conversation that you heard?
 6 A. No, sir. After that incident, Chris West
 7 took me up there and put me on the hill
 8 beside Kevin.
 9 Q. Took you back out of your car?
 10 A. Yes, sir.
 11 (Defendant's Exhibit 9 was marked
 12 for identification.)
 13 Q. I'm going to show you what we'll mark as
 14 Defendant's Exhibit 9.
 15 A. Uh-huh (positive response).
 16 Q. Mr. Marshall, do you recognize what's in
 17 Defendant's Exhibit 9?
 18 A. Appear to be some money.
 19 Q. Looks like it's on some carpet too; right?
 20 A. Appear to be.
 21 Q. Is that the same kind of carpet that you
 22 have in your Nova?
 23 A. My Nova doesn't even have carpet in it, so

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1 I don't know what that is.
 2 Q. Did you have money like that that day, a
 3 five and what looks like a bunch of ones?
 4 A. I had \$500. If that's the money, I don't
 5 know whose it is. It ain't mine. I had
 6 two \$100 bills and the rest in twenties.
 7 Q. So it's your testimony that that money
 8 wasn't in your car that day?
 9 A. I can't say it wasn't in my car. It may
 10 have been Kevin's money, but it's not mine.
 11 Q. So you don't recognize anything in
 12 Defendant's Exhibit 9 at all?
 13 A. It's not my money.
 14 Q. That's not what I asked you. I understand
 15 that you know that it's money. Do you
 16 recognize what Defendant's Exhibit 9 shows?
 17 A. I don't recognize that.
 18 (Defendant's Exhibits 10 and 11
 19 were marked for identification.)
 20 Q. Mr. Marshall, I'm going to show you two
 21 more pictures, Defendant's 10 and 11. Were
 22 those pictures taken of you on June 28th,
 23 2005?

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1 A. Yes.
 2 Q. Is that what you were wearing at the time?
 3 A. Yes.
 4 Q. And that is you in those pictures; right?
 5 A. Yes.
 6 MR. WILFORD: Let's get something
 7 to eat.
 8 (Whereupon lunch recess was taken.)
 9 Q. (Continuing by Mr. Wilford) Mr. Marshall,
 10 you testified before we took a break that
 11 at some point you were taken and put over
 12 on the side of the hill there next to
 13 Kevin; right?
 14 A. Yes.
 15 Q. What, if anything, happened after you were
 16 put over there by Kevin?
 17 A. They ran my name, his name in and --
 18 Q. What do you mean they ran his name in?
 19 A. Warrant check or whatever, social security
 20 number. Ran both our names and --
 21 Q. Did any other police units arrive?
 22 A. Probably 30 to 45 minutes later they called
 23 back to Hayneville for a sheriff's deputy

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1 hill for 30 to 45 minutes before another
 2 vehicle came?
 3 A. Yes. Before the police vehicle came.
 4 Q. Anything else happen during that time
 5 besides your information being called in?
 6 A. Not during that time I was sitting on the
 7 hill. Nothing happened then.
 8 Q. So nothing happened between that time and
 9 the time that another police unit showed
 10 up; is that right?
 11 A. No. Nothing happened. The only thing that
 12 I forgot to leave out that happened is
 13 backing up to when Chris West initially
 14 drew down on me he did fire his weapon in
 15 my direction.
 16 Q. You forgot to mention that?
 17 A. Yeah.
 18 Q. Was that after you had a chance to talk to
 19 your lawyers at lunchtime?
 20 MR. LEWIS: Object.
 21 A. I just --
 22 MR. LEWIS: Don't discuss anything
 23 that you and I might have

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1 vehicle. It arrived, which I was placed
 2 in.
 3 Q. I'm sorry I interrupted you. So they
 4 called his information in?
 5 A. Called both of us in.
 6 Q. Anything happen after they called that in?
 7 A. No. We just was sitting there on the grass
 8 and they was walking around talking among
 9 themselves. I heard them calling in for
 10 the vehicle.
 11 Q. Did they call over a radio or cell phone,
 12 or how did they do that?
 13 A. Over the dispatch (indicating).
 14 Q. You're doing --
 15 A. Police dispatch.
 16 Q. Over the radio?
 17 A. I saw them reach in the car, yeah.
 18 Q. Could you hear what they were saying?
 19 A. Only what I could make out of it my social
 20 security number and name being called and
 21 they was running or whatever over the loud
 22 speaker.
 23 Q. And so you sat there on the side of the

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1 talked about.
 2 Q. I'm not asking about the substance of the
 3 conversation. I'm just -- Were you
 4 reminded of it at lunchtime?
 5 A. No, I wasn't reminded of it.
 6 Q. Well, what happened with this shooting?
 7 A. It just -- That's the first thing -- After
 8 he drew down, he fired the weapon before
 9 coming to approach me.
 10 Q. Before who approached you?
 11 A. Before he approached me he had already
 12 fired the weapon.
 13 Q. Let's back up, then, and as you say
 14 completely regroup. He got out of the car
 15 and he had his weapon pointed at you; is
 16 that right?
 17 A. Yes, sir.
 18 Q. Did he give you commands?
 19 A. He said get on the ground or something to
 20 that effect.
 21 Q. And you didn't comply with those commands.
 22 You told me that earlier; right?
 23 A. No, I didn't comply.

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1 Q. So you were still standing there?
 2 A. In the doorway, yeah.
 3 Q. In the doorway of the car?
 4 A. Uh-huh (positive response).
 5 Q. And he fired?
 6 A. Yeah.
 7 Q. This was after giving you commands and you
 8 not complying; right?
 9 A. Yeah. He had given some kind of command.
 10 Q. And you hadn't complied?
 11 A. No.
 12 Q. Where did he shoot?
 13 A. Right out -- if I may.
 14 Q. Sure.
 15 A. In this general direction (indicating).
 16 Q. We're looking at Defendant's Exhibit 2.
 17 A. Right down past the doorway.
 18 Q. You're making a pretty broad motion there.
 19 A. I'm standing in the doorway, but he fired
 20 right out from -- past the doorway in this
 21 direction down --
 22 Q. Towards the front of your car or --
 23 A. I heard the bullet hit the ground. I heard

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1 the gunshot. It hit the ground somewhere
 2 in this direction. He fired down there.
 3 Q. Did the bullet strike the ground in front
 4 of you or off to the side of you?
 5 A. I can't say exactly where it struck,
 6 gunfire. But I did hear it hit the ground
 7 in this area right here. I heard it.
 8 Q. How many times did he shoot?
 9 A. One shot.
 10 Q. And did you comply with his commands after
 11 he shot at the ground?
 12 A. I still had my hands up over the vehicle.
 13 I asked him, why are you shooting at me,
 14 what are you doing, and he was just still
 15 saying, get on the ground, this or that,
 16 get on the ground. That's when he was
 17 walking up on me.
 18 Q. Okay. So this man just fired a round at
 19 your feet? This man that you know to be a
 20 police officer and you still didn't do what
 21 he said?
 22 A. He fired at me, but I didn't -- like I
 23 said, I didn't run out to jump on the

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1 ground. I've been arrested before. That's
 2 why I had my hands up to show I wasn't
 3 posing a threat. But I didn't see any
 4 reason why he had to fire at me.
 5 Q. Well, when you were arrested before, did
 6 you do what the police told you to do?
 7 A. Yeah.
 8 Q. And you have no idea where the round hit
 9 the ground other than it was generally
 10 somewhere out in front of your car on the
 11 passenger's side?
 12 A. I can't specifically say where it hit, but
 13 I know it was right in the direction of the
 14 front driver's door somewhere before the
 15 end of the car. I heard it hit the ground
 16 when he shot.
 17 Q. Did it kick up any dirt or grass or
 18 anything like that?
 19 A. Just like (indicating) quick.
 20 Q. Did any of it hit you?
 21 A. No. Didn't no dirt or -- it didn't hit me.
 22 Q. All right. Up until the point that another
 23 police vehicle arrived, have you told me

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1 everything that happened out there after
 2 you were put on the side of the road?
 3 A. Yeah. Up until he placed me beside Kevin.
 4 The only other thing happened is the
 5 vehicle pulled up and they placed me in
 6 that vehicle and put Kevin in the Lincoln
 7 Town Car.
 8 Q. Let's talk about -- How many other vehicles
 9 showed up?
 10 A. Just one.
 11 Q. What kind of car was it?
 12 A. Brown Ford Crown Vic, county sheriff.
 13 Q. It was a county sheriff's vehicle?
 14 A. Yeah.
 15 Q. All right. Do you know -- How many
 16 officers showed up in that car?
 17 A. One officer.
 18 Q. Do you know the name of that officer?
 19 A. No, I don't.
 20 Q. Can you describe him for me?
 21 A. Appeared to be a younger white guy, kind of
 22 stocky build, Army cut.
 23 Q. And you were placed in the back of his car?

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1 A. Yes, sir.
 2 Q. When did that occur? Was it right after he
 3 arrived, or how much time passed?
 4 A. Well, I'll say approximately 10 minutes, 15
 5 minutes max after he arrived after they
 6 figured out who was going to get in what.
 7 The guy placed me in the back of the county
 8 sheriff car and placed Kevin in the front
 9 seat of the Lincoln Town Car. And Shawn
 10 Hutson drove off in my car.
 11 Q. You watched him drive off in your car?
 12 A. Uh-huh (positive response). He left first.
 13 Q. You were still there on the scene?
 14 A. Uh-huh (positive response).
 15 Q. How long did you stay there on the scene
 16 after your car was driven off?
 17 A. Approximately five minutes.
 18 Q. Did anything happen during that five
 19 minutes?
 20 A. No. I just was driven off by the county
 21 deputy sheriff.
 22 Q. Did you leave first, or did Chris leave
 23 first?

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1 A. Shawn Hutson left first.
 2 Q. Yeah. We established that.
 3 A. Then I left in the deputy sheriff car. And
 4 we only went halfway up 21 when they
 5 stopped and got out of the car and started
 6 looking for something. Shawn Hutson turned
 7 around in my vehicle and came back and
 8 stopped and got out with Chris West walking
 9 down 21 appeared to be looking for
 10 something. I was in the county sheriff
 11 car. Kevin was in the Lincoln Town Car
 12 behind us.
 13 Q. All right. Where did you stop? Was it
 14 before County Road 7 or after County Road
 15 7?
 16 A. On Highway 21 right up the road. After
 17 turning on Highway 21, they stopped right
 18 there and -- all three vehicles.
 19 Q. I understand it was on Highway 21. I'm
 20 just trying to figure out. Let's go back
 21 and look at Defendant's Exhibit 5. About
 22 where on County Road 21 did they stop and
 23 look?

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1 A. This would be 263 crossing.
 2 Q. Right.
 3 A. I would say somewhere in here right down
 4 from the turn on County Road -- off County
 5 Road 7 on 21.
 6 Q. Looks like you're kind of pointing -- and
 7 correct me if I'm wrong -- about halfway
 8 between County Road 7 and your home on
 9 Highway 21.
 10 A. Right off County Road 7 probably a couple
 11 hundred feet. That's where they stopped.
 12 Q. Did they find anything?
 13 A. Not to my knowledge. I didn't see them
 14 find anything.
 15 Q. Has it come to your attention at some point
 16 later that they found anything?
 17 A. It was said that he picked a baggy up
 18 beside the road or something.
 19 Q. Did you ever see the baggy?
 20 A. No, sir.
 21 Q. How long did it take them to search on the
 22 side of Highway 21?
 23 A. I'll say approximately 15 minutes or so.

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1 Q. Was Kevin there, too, in their car?
 2 A. He was in the Lincoln.
 3 Q. What happened after they got done
 4 searching?
 5 A. Chris West came back to the Lincoln, waved
 6 Shawn Hutson to go on. And the sheriff car
 7 pulled off with me and then they stopped at
 8 the store right up the road I was telling
 9 you about, Howard's Country Store. Shawn
 10 Hutson pulled up on the gas tank, put gas
 11 in my vehicle. Chris West, the deputy, and
 12 Shawn Hutson went inside the store.
 13 Probably got something to drink or
 14 whatever. I had a flat -- They had a flat
 15 on the sheriff's car. They changed the
 16 flat while I was still in the car, Chris
 17 West and the deputy sheriff.
 18 Q. There at the gas station?
 19 A. Yes, sir. They changed the flat. And
 20 Shawn Hutson, he left about 10 minutes
 21 earlier and went up 21 in my car.
 22 Q. Was your car almost out of gas?
 23 A. Yeah. It was on E.

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1 Q. How long did that take there at the gas
2 station for them to do all that?
3 A. I'll say approximately another 20 minutes.
4 Q. Was there any conversation with you that
5 took place at that time?
6 A. No. I was in the back seat of the patrol
7 car the whole time.
8 Q. Nobody talked to you?
9 A. No, sir.
10 Q. Did anything else happen as far as
11 something happening to you personally while
12 you were there at the gas station?
13 A. No, sir.
14 Q. Just sat there and waited for them?
15 A. (Witness nods head). Yes, sir.
16 Q. What happened after the gas station?
17 A. After changing the tire, Chris West got in
18 the Lincoln. He left first. The deputy
19 sheriff got in and proceeded to go to the
20 Lowndes County Detention Facility.
21 Q. Between the gas station and the detention
22 facility, did you have any conversation
23 with the deputy?

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1 A. No. He didn't say anything.
2 Q. Did you hear anything on the radio?
3 A. No, sir.
4 Q. What happened when you got to the jail --
5 excuse me -- detention facility?
6 A. The deputy radioed to come in through the
7 gate and Chris West came in also. And he
8 brought -- Deputy got me out of the back
9 seat of the car and brought us into the
10 facility into booking.
11 Q. Anything out of the ordinary happen from
12 the time you got out of the car and you got
13 to the booking area?
14 A. No.
15 Q. Did you have any conversation with the
16 deputy?
17 A. No.
18 Q. Who escorted you from the car to the
19 booking area?
20 A. The deputy.
21 Q. What happened when you got to the booking
22 area?
23 A. I think Chris West told us to stand back

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1 toward the wall. The deputy was standing
2 over to the right by the counter. Told me
3 to take off -- Well, he took the cuffs
4 off. He told me to take off jewelry,
5 et cetera.
6 Q. Who told you to do that?
7 A. Chris West. Told me to take off the
8 jewelry. So I took the jewelry off, put it
9 on the counter. And at this point they was
10 fixing to log whatever possessions in the
11 booking. Chris West put what was supposed
12 to have been my money on the counter, which
13 I see was only five twenties, \$100 bill. I
14 immediately asked him where is the rest of
15 my money. The deputy reached to get the
16 money and tried to count it. Chris West
17 snatched it out of his hand and told him
18 don't worry about it, put him in the hole.
19 They put me in the hole.
20 Q. How much did he put on the counter?
21 A. \$100, five twenties.
22 Q. Five twenties?
23 A. Uh-huh (positive response).

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1 Q. I take it at some point you had to have
2 been taken out of handcuffs, right --
3 A. Yes, sir.
4 Q. -- to take all your stuff off?
5 A. Yes, sir.
6 Q. When were you taken out of handcuffs?
7 A. Not -- A couple of minutes after coming
8 into booking after Chris got behind the
9 desk and told them to take me out of the
10 cuffs so I can take my belongings off.
11 Q. Who took you out of the cuffs?
12 A. The deputy.
13 Q. Was there anybody present in the room
14 besides you, the deputy, and Chris?
15 A. Kevin. And another lady in booking was
16 behind the desk.
17 Q. There was a lady in booking?
18 A. Uh-huh (positive response).
19 Q. What about Shawn Hutson, was he present?
20 A. Shawn Hutson wasn't in there.
21 Q. Where was the lady that you described being
22 in booking when the discussion of the money
23 occurred?

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1 A. Standing right there. She was in her
2 desk. But when Chris came in, she got up
3 and Chris got in the desk and started
4 getting the paper or whatever. She was
5 standing right beside him when he put the
6 money on the counter and I immediately
7 said, man, that's not all my money, where
8 is the rest of my money. And the deputy
9 reached for it to start counting it and
10 Chris snatched it from him and told him,
11 don't worry about it, put him in the hole.
12 Q. Do you remember what this lady's name was?
13 A. I can't recall.
14 Q. Can you describe her for me?
15 A. I probably know her if I see her. It's
16 been a while. I've seen her since I've
17 been back up there. But I probably have to
18 see her. I'm not sure if it's
19 Ms. Cottrell. It's one of them. I don't
20 know who is in booking. It was around
21 two -- between two and 2:30 when we finally
22 reached the facility that evening. From 12
23 that evening when the incident started, it

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1 was two to 2:30 when I finally reached the
2 building.
3 Q. You're saying evening. 12 noon?
4 A. It was somewhere around 12 noon when the
5 incident began. When I finally arrived
6 there, it was somewhere between two --
7 after two o'clock.
8 Q. P.m. or a.m.?
9 A. P.m.
10 Q. Okay. I'm just making sure.
11 All right. Now, you made a statement
12 about your money there, a verbal statement;
13 correct?
14 A. Yes, sir.
15 Q. At any time did you ever make a written
16 statement about your money while you were
17 in the jail?
18 A. No, sir.
19 Q. Did you ever file a grievance?
20 A. No, sir.
21 Q. Have you ever filed a report with any
22 police agency about your money being taken?
23 A. No, sir.

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1 Q. Did you ever talk to the sheriff about it?
2 A. No, sir.
3 Q. Did you ask for any medical attention?
4 A. I did upon going to jail, but I never did
5 get any.
6 Q. When did you first ask for medical
7 attention?
8 A. Approximately the next morning I told them
9 I had a headache and I had bumped my head;
10 I had lacerations on my wrists from the
11 cuffs being tight; I need to see a doctor;
12 but no response.
13 Q. How did you ask to get treatment?
14 A. They have a -- press the button for verbal
15 response and you have to fill out a paper,
16 a request or something for it. But I never
17 did get a chance to go.
18 Q. Did you fill out the paper?
19 A. Actually, I don't even recall. I can't
20 really be certain. But I know I mashed the
21 intercom to request a doctor.
22 Q. Do you know who you would have spoken to?
23 A. At the time it was just the jailer on duty

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1 in the booth, whoever was in the booth at
2 that time.
3 Q. And you don't know who that is?
4 A. I can't recall.
5 Q. Was that the only time you asked?
6 A. Yes. After I didn't get no reply, I just
7 left it alone.
8 Q. Was there anyone who witnessed you asking
9 for medical attention besides the person
10 you talked to in the booth?
11 A. Inmates.
12 Q. Do you recall any of their names?
13 A. I don't really -- didn't know anybody in
14 there. Just dayroom area people. I don't
15 know any of them.
16 Q. You didn't know any of them at the time?
17 A. Not the present day when I requested
18 medical treatment.
19 Q. Have you spoken to anybody who was an
20 inmate in there with you since then?
21 A. No.
22 Q. As you sit here today, you can't tell me
23 any names of any of the inmates who were in

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1 there with you?
 2 A. Maybe one or two that I got to know while I
 3 was in there, but I haven't seen them since
 4 I made bond.
 5 Q. Who are they?
 6 A. I know Joshua Bullard. He was in there. I
 7 know it was somebody else in there I knew.
 8 I can't really recall right now off the top
 9 of my head.
 10 Q. How long were you in the jail after being
 11 placed in there on the 28th of June?
 12 A. I made bond August 5th.
 13 Q. How did you make bond?
 14 A. Bail bondsman.
 15 Q. Who arranged that?
 16 A. My girlfriend and me.
 17 Q. Who was your girlfriend?
 18 A. Ernestine Powell.
 19 Q. Ernestine?
 20 A. Uh-huh (positive response).
 21 Q. Powell?
 22 A. Yes, sir.
 23 Q. Are you still in contact with Ms. Powell?

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1 A. Yes.
 2 Q. Where does she live?
 3 A. Greenville.
 4 Q. Have you got an address?
 5 A. 22 Cherrywood Lane. She was on my bond.
 6 Q. Did she put up the money?
 7 A. Half of it.
 8 Q. Half?
 9 A. (Witness nods head).
 10 Q. How much was your bond?
 11 A. Initially 10,000. 10,000.
 12 Q. There's an allegation in your amended
 13 complaint at paragraph 39 that an aunt
 14 tried to do a property bond for you. Who
 15 was that aunt?
 16 A. Marzett Wright.
 17 Q. Can you spell that first name for me?
 18 A. M-A-R-Z-E-T-T.
 19 Q. W-R-I-G-H-T?
 20 A. Yes, sir.
 21 Q. Where does she live?
 22 A. Mosses Highway.
 23 Q. Do you have an address for that?

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1 A. Not right off the top of my head I don't.
 2 Q. Was it her property that she was going to
 3 put up for you?
 4 A. Yes, sir.
 5 Q. Do you know where that property is?
 6 A. It's in Mosses.
 7 Q. Is it her residence?
 8 A. Yeah. Brick home.
 9 Q. What happened with that?
 10 A. From my understanding I talked with her
 11 three times on the phone. She told me that
 12 she contacted Sheriff Vaughner and he told
 13 her that on first account that he would
 14 give it some thought. Second account he
 15 said -- he just blew it off. And the third
 16 time he seen her that Wednesday and asked
 17 him was he going to let her sign my bond.
 18 He told her something to the effect I'm
 19 going to let him sit there a while; I'll
 20 have to think about it. And after that I
 21 didn't even get in contact with her
 22 anymore. She wouldn't try to do it, I
 23 guess.

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1 Q. That's what supposedly Sheriff Vaughner
 2 told her?
 3 A. Yeah. That's what she told me Sheriff
 4 Vaughner told her. She's the county
 5 commissioner over District 5.
 6 Q. Do you know what the value of her property
 7 is there in Mosses?
 8 A. Not exactly. I know it's a Jim Walter Home
 9 she had purchased some years ago.
 10 Q. Did she own it outright?
 11 A. Yes, sir.
 12 Q. Did you ever personally speak with Sheriff
 13 Vaughner about your bond?
 14 A. I requested to talk to Sheriff Vaughner but
 15 never came through with the request. But
 16 one day he did happen to come in the back
 17 area where I did verbally ask him why
 18 wouldn't he let my aunt sign my bond, and
 19 he act as if he didn't know what I was
 20 talking about. He told me, you give her a
 21 call and he'll see what he can do. That's
 22 what he told me that day.
 23 Q. When was that?

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1 A. Approximately a week after I had been in
2 there, after she told me she had did all of
3 that.
4 Q. Okay. Did you have any visitation while
5 you were in jail?
6 A. Yes.
7 Q. Who came to visit you?
8 A. My aunt came once to retrieve my jewelry
9 and the \$100.
10 Q. Is that the same aunt that was going to put
11 up the house?
12 A. Shirley Marshall. It's my aunt. It's who
13 I released \$99 to because I took a dollar
14 for two aspirin I took in there. She took
15 my jewelry and \$99 off the book to go
16 toward my bond.
17 (Defendant's Exhibit 12 was marked
18 for identification.)
19 Q. Since we're talking about that, let me show
20 you Defendant's Exhibit 12. Have you ever
21 seen Defendant's Exhibit 12 before,
22 Mr. Marshall?
23 A. Yes. I had to sign that to release my

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1 jewelry and the money.
2 Q. That's your signature there?
3 A. Yes, sir.
4 Q. And that's where Ms. Marshall came and
5 picked up your property and your \$99.50 it
6 says?
7 A. Yes, sir.
8 Q. Anybody else besides Ms. Marshall come and
9 visit you?
10 A. Girlfriend, Ernestine.
11 Q. Anyone else?
12 A. If anyone else came, I never saw them.
13 Q. And you were able to make some telephone
14 calls because you were telling me about
15 talking to your Aunt Wright.
16 A. Yes, sir.
17 Q. Did you make any other telephone calls -- I
18 tell you what. Let's back up and talk
19 about the 28th of June when you were
20 initially brought to the detention
21 facility. Were you able to make a phone
22 call that day?
23 A. Yeah.

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1 Q. Who did you call?
2 A. My aunt, Shirley Marshall.
3 Q. Shirley Marshall?
4 A. Yes, sir.
5 Q. And what did y'all talk about?
6 A. I told her that I had been arrested and I
7 needed her to come up here and see could
8 she get me out.
9 Q. And what did she say?
10 A. Asked me what happened and where is she
11 going to get the money from. I told her to
12 come get my money and come get my jewelry
13 and pawn it and try to get some bail when I
14 get -- when I get a bond.
15 Q. What kind of telephone did you use to make
16 that call?
17 A. Phone right there on the desk.
18 Q. Just a regular old phone?
19 A. I guess the office phone they use in
20 booking. The phone in booking.
21 Q. Do they have phones in the detention
22 facility back in the dayroom areas and the
23 cell blocks?

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1 A. Yes, sir.
2 Q. Did you ever make any phone calls on those
3 phones?
4 A. Yes, sir.
5 Q. How does that work?
6 A. Got to call collect and get somebody on the
7 other end to accept.
8 Q. And who did you call on that phone -- on
9 those phones?
10 A. In the back?
11 Q. Yes, sir.
12 A. Called Marzett Wright a couple of times. I
13 called my uncle. Uncle tried to post
14 bond. Didn't come through.
15 Q. Which uncle was that?
16 A. My father -- father's brother from New
17 York. Now stays in Selma.
18 Q. What's his name?
19 A. John -- I want to say John Cowans. Call
20 him Bip.
21 Q. Bip?
22 A. Yeah. That's all I know him from my
23 childhood. Just moved from New York about

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1 three years ago.
 2 Q. Anybody else?
 3 A. I called Shirley and her daughter on
 4 three-way. That's mostly who I was getting
 5 to call. And I had her to call my lawyer,
 6 Charlotte, and go to Charlotte's office for
 7 me.
 8 Q. Who is Shirley's daughter? You said her
 9 daughter.
 10 A. Cherry Marshall.
 11 Q. How old is she?
 12 A. Just estimating. I don't know. She go
 13 along with Kevin. However old Kevin is.
 14 I'm the oldest of all of them. However old
 15 he is. 20-something. They're the same
 16 age.
 17 Q. Did anything happen to you while you were
 18 there at the detention facility?
 19 A. Nothing physical, no.
 20 Q. And you said you were there until the 5th
 21 of August; is that right?
 22 A. Yes, sir.
 23 Q. And you were released on bond?

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1 A. Yes, sir.
 2 Q. You didn't miss any work while you were in
 3 the jail; right?
 4 A. I wasn't working at the time.
 5 Q. So you didn't miss any work?
 6 A. No.
 7 Q. What happened after you got out of jail?
 8 A. Started trying to get a lawyer to see what
 9 was going on with the charges.
 10 Q. What charges did you have as a result of
 11 the June 28th incident?
 12 A. Pistol carrying without a permit and
 13 possession of a controlled substance.
 14 Q. What was the controlled substance?
 15 A. I don't know. That's all they told me,
 16 possession of a controlled substance.
 17 Q. They never told you what it was?
 18 A. No, sir.
 19 Q. Did you ever have to go to trial on those
 20 charges?
 21 A. Yes, sir.
 22 Q. What happened at trial?
 23 A. I came to trial with my lawyer. They

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1 called my name on the docket. And Chris
 2 West called my lawyer in the corner and she
 3 told me that he was throwing it out and I
 4 can go home.
 5 Q. That Chris West was throwing it out?
 6 A. That's who she was in the corner and, you
 7 know, had a little mediation with and came
 8 back to me.
 9 Q. Did you ever learn why it was thrown out?
 10 A. No. I ain't ever known. No. She just
 11 told me they was throwing it out. He asked
 12 her permission to come speak to me and told
 13 me I can pick my vehicle up the next day,
 14 which they had it impounded since that
 15 incident. This was January 4th or 5th I
 16 want to say before the 6th when I went to
 17 court.
 18 Q. Was there any damage to your vehicle?
 19 A. Yeah. Knocked out of alignment. Pipes was
 20 hanging down.
 21 Q. What kind of pipes?
 22 A. Exhaust. Exhaust pipe was rattling. Rear
 23 bumper bent.

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1 Q. Can you show me where on the pictures?
 2 A. You can see right there the bumper is bent
 3 up on the light where he rammed me at. And
 4 you can't really tell, but after I got it
 5 back out of the pound, it just drive like
 6 it wasn't the same car no more.
 7 Q. Looks like when you were describing where
 8 he hit you it was the -- was it the back --
 9 A. Yeah. It was pushed up.
 10 Q. -- driver's side right underneath the
 11 taillight there?
 12 A. And it have been also burglarized while it
 13 was in the pound. All the music equipment
 14 was stolen out, radio. The lock was
 15 jimmied out and the side glass was broke.
 16 Q. Where was the impound at?
 17 A. Randy's Impound in Ft. Deposit.
 18 Q. Did you ever get any money out of them or
 19 any redress for what happened to your car?
 20 A. They told me to call Chris West.
 21 Q. What all was taken out of the car?
 22 A. Stereo from the inside, all speakers,
 23 woofers and amps out of the trunk, CDs,

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1 et cetera.
 2 Q. Anything else?
 3 A. That's it.
 4 Q. What happened to the gun?
 5 A. I don't even know. All I know they stopped
 6 the case. I don't know anything else about
 7 it.
 8 Q. Did they drop the charge on that too?
 9 A. Yes.
 10 Q. Has Mr. McWilliams ever come to you and
 11 asked for his gun back?
 12 A. He asked me what happened to it. I told
 13 him it was in the car that day and as far
 14 as I know the police got it.
 15 Q. How many times have y'all talked about that
 16 gun?
 17 A. I've seen him on two or three occasions in
 18 the past two years since the incident and
 19 he asked me about whatever happened to his
 20 gun and I told him as far as I know the
 21 police got it.
 22 Q. Well, has he blamed you for losing his gun?
 23 A. I mean, he knows what happened that day.

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1 He ain't really pointing no blame. He just
 2 asked me was it -- what happened, can he
 3 go -- can he pick it up. I told him I
 4 don't know. I went to court and they
 5 tossed it is all I know.
 6 Q. Do you know if he's ever tried to get it
 7 back?
 8 A. I don't.
 9 Q. When's the last time you talked to him?
 10 A. I would have to say a couple months ago.
 11 Probably a couple months ago last incident.
 12 Q. Did he ask you about the gun then?
 13 A. Yeah.
 14 Q. I'm sorry?
 15 A. Yes, sir.
 16 Q. Do you know who the prosecutor was in your
 17 case?
 18 A. I really don't even know.
 19 Q. Other than, of course, Kevin who was in the
 20 car with you, do you know of anybody else
 21 who claims to have witnessed the chase from
 22 County Road 7 up to where you wound up on
 23 Highway 21?

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1 A. No. I don't know anybody who have
 2 claimed. All I know it was vehicles
 3 passing along. I'm not sure who witnessed
 4 it. But not anyone to my knowledge that I
 5 know.
 6 Q. You're talking about after y'all came to a
 7 stop on 21?
 8 A. Yeah. After we came to a stop it was some
 9 vehicles started passing by.
 10 Q. Did you recognize any of those vehicles?
 11 A. I recognized one vehicle that stopped when
 12 I was standing beside the road in my
 13 boxers. It was relative -- a distant
 14 relative that stay down the road from me.
 15 And she turned around. Actually that's
 16 when Chris stopped doing what he was doing
 17 to go get the light and put on top of the
 18 car because she slowed down when she saw me
 19 beside the road and turned around and came
 20 back down the road and they was waving them
 21 on. And after that she went back up the
 22 road. I ain't see her again.
 23 Q. What's her name?

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1 A. Margaret, Margaret Wright.
 2 Q. Margaret Wright?
 3 A. Yes, sir.
 4 Q. And where does she live at? Do you have an
 5 address?
 6 A. Right down the road. Dutch Bend area. I
 7 don't know the number -- address. It's
 8 right down the road from the residence
 9 where I was residing at the time.
 10 Q. Which way?
 11 A. Approximately this far from where I'm at.
 12 It's a caution light there.
 13 Q. She lives down by the caution light past
 14 your house going out towards Wilcox County?
 15 A. Yeah.
 16 Q. Any other vehicles that you recognized pass
 17 by that day?
 18 A. I didn't recognize any other vehicle.
 19 Q. Has anyone come up to you and said they
 20 witnessed your vehicle being knocked off
 21 the road?
 22 A. No, sir.
 23 Q. Do you know of anyone who has claimed to

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1 have witnessed that?

2 A. No, sir.

3 Q. And, again, I'm excluding Kevin because I
4 know he was involved.

5 Anyone besides Margaret Wright that
6 you're aware of who witnessed what happened
7 after you were stopped there at the side of
8 the road?

9 A. No, sir.

10 Q. Is there anyone else besides you who can
11 testify about the \$500 that you supposedly
12 had on you that day?

13 A. As far as I know Kevin. No one else.

14 Q. How would Kevin know that you had \$500 on
15 you that day?

16 A. Because the motor we was pulling out for
17 one I had took small -- a payment on from
18 my cousin. I had sold him the engine. We
19 was pulling the engine out of his car to
20 put the engine that I sold him in.

21 Q. You had already collected payment for that?

22 A. He had gave me like \$50 toward it. But he
23 still owed me the balance after we get the

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1 car back running. We was pulling the dead
2 engine out. But I had sold him an engine,
3 but we hadn't ever got a chance to put it
4 in.

5 Q. So that money that you had that day \$50 of
6 it was from him. And who is he? What's
7 his name again?

8 A. That would be Herman. His name is Herman,
9 the one that owned the car.

10 Q. \$50 from Herman and the other \$450 was left
11 over from your gambling winnings. Is that
12 what your testimony is?

13 A. The \$50 he had previously given me -- I had
14 money that I saved. It may have been the
15 \$50. But I had \$1,000 from gambling, you
16 know. That's what was left over from
17 everything, you know.

18 Q. So explain to me again how the \$50 for the
19 engine ties in with Kevin knowing that you
20 had \$500 on you.

21 A. Because during the time that Herman came to
22 purchase the engine, he gave me \$50 toward
23 it. Kevin would see that I reached in my

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1 pocket and had more than \$50 in my pocket.

2 He was staying with me at the time.

3 Q. So he just knows that you had more than \$50
4 on you?

5 A. Yes, sir.

6 Q. Is that what you're telling me?

7 A. Yeah.

8 Q. To your knowledge, does he know exactly how
9 much you had on you?

10 A. No. I don't think he knows exact amount.

11 He just knows I had more than that.

12 Q. What damages are you claiming that you're
13 entitled to as a result of Chris West's
14 conduct?

15 A. Well, for one I can't seem to acquire
16 employment since this incident. In my
17 field of warehousing every time I apply for
18 a job I'm being turned down since the
19 incident happened. And I usually acquire
20 employment very rapidly. I claim the
21 damage to my vehicle that I have lost, my
22 possessions, lost bond money, loss of time
23 of suffering in jail for something I didn't

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1 have.

2 Q. Let me stop you there real quick. Didn't
3 you tell me that your girlfriend put up the
4 bond money?

5 A. She put up half of it. The rest of it was
6 mine.

7 Q. How much did you put up?

8 A. I put up like 450 --

9 Q. \$450?

10 A. -- that I recovered from pawning my jewelry
11 and the money left over that I had on the
12 book. She put up the rest.

13 Q. I'm sorry. I interrupted you. The bond
14 money and what else?

15 A. Like I said, my vehicle damages I lost
16 there. And just me sitting in jail for
17 something I didn't do. I mean, it's just
18 unfair.

19 Q. You haven't had any medical expenses;
20 right?

21 A. No, sir.

22 Q. And you weren't employed at the time?

23 A. No, sir.

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1 Q. You told me that you still have the knot on
2 your head. Are there any other permanent
3 conditions that you have as far as your
4 body goes as a result of what happened on
5 June 28th?
6 A. Just that -- Just a lot of mental anguish,
7 just suffering, anxiety attacks. A lot of
8 nights I can't sleep at night for being
9 shot at. I already been robbed. It took
10 me a while to get over that. I had a gun
11 put in my face behind that. It took me a
12 while to get over that.
13 Q. I'm not asking about your mental condition
14 right now. I'm just asking about your body
15 condition. Anything besides the knot on
16 your head?
17 A. Oh, no. Just that knot left when I hit the
18 steering wheel, as far as that.
19 Q. Describe your mental anguish for me that
20 you're talking about.
21 A. I just -- I just have a lot of nights where
22 I can't sleep, just anxiety attacks a lot
23 about the whole ordeal and --

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1 Q. Describe an anxiety attack for me.
2 A. Just nightmares of being shot at and ran
3 off the road by the police and being
4 suspect every time I'm being sighted in
5 Lowndes County by the police. I'm getting
6 strange looks. Or stopped like the
7 incident where I went to jail. It was
8 supposed to be a traffic stop, but they
9 called Shawn Hutson who was on the drug
10 task force that day. Every time they lay
11 eyes on me they harass me about stuff like
12 that even though I just -- I don't
13 understand.
14 Q. Have you seen Chris West again since that
15 day?
16 A. I haven't seen Chris West since I went to
17 court in January '06.
18 Q. So that's the only time you saw him?
19 A. Uh-huh (positive response).
20 Q. So he hasn't pulled you over since then;
21 right?
22 A. No. I haven't seen him.
23 MR. WILFORD: Let's take a short

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1 break.
2 (Brief recess was taken.)
3 Q. Just a few more questions, Mr. Marshall,
4 and we'll be done. With respect to the
5 anxiety attacks and things that you were
6 telling me about, have you tried to get any
7 kind of mental health treatment for that?
8 A. Well, right now I'm in dire straits. I
9 can't afford anything. I haven't seeked
10 any professional help for it. I've just
11 been trying to deal with the stress, you
12 know. Somehow I hope it goes away over
13 time.
14 Q. You say you haven't tried. Your
15 interrogatory responses you told us you
16 couldn't afford it. I'm just asking you if
17 you've tried.
18 A. No, sir, I haven't.
19 Q. Has anybody recommended to you that you try
20 to get some mental health treatment?
21 A. I haven't referred to anybody. It's all on
22 my own.
23 Q. After the robbery that you described for us

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1 today, did you get any mental health
2 treatment for that?
3 A. No, sir.
4 Q. Did you try?
5 A. No, sir.
6 Q. Did anybody recommend to you that you
7 needed it?
8 A. Just deal with my own -- on my own. I
9 really don't have anybody but me, so I try
10 to deal with things among myself. But it
11 took a little time for me to get my
12 mind-set back, you know, where I can be out
13 around people. Everybody just -- I feel
14 like they out to get me, you know.
15 Q. Are you set back right now as you put it?
16 A. I'm still having some anxiety attacks at
17 night. Still can't sleep some nights. But
18 if I'm somewhere around some people, you
19 know, I'm fairly being compromised. I kind
20 of cope with it.
21 Q. You told me earlier -- I need to go back on
22 you a little more when you were first
23 brought into booking. Chris West said

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1 something about put him in the hole.
 2 A. Yes, sir.
 3 Q. Were you put in a hole?
 4 A. The holding cell up front. That's what I
 5 meant.
 6 Q. So you were placed in the holding cell?
 7 A. Yes, sir.
 8 Q. At some point you were put back in the
 9 back; is that right?
 10 A. I think later that night dressed me out and
 11 took me to a cell.
 12 Q. So you stayed in a holding cell for a few
 13 hours?
 14 A. Yes, sir.
 15 Q. Is that fair to say?
 16 A. Yes, sir.
 17 Q. I think that's all I have. Thank you very
 18 much.
 19 A. Thanks.
 20 EXAMINATION
 21 BY MR. LEWIS:
 22 Q. I have one question. When you're standing
 23 up there on the side of the road in your

Page 154

1 boxer shorts, how were you feeling then?
 2 A. Humiliated because traffic was coming along
 3 and people seeing me beside the road in
 4 cuffs in my underwear.
 5 MR. LEWIS: Okay. That's it.
 6 (Deposition was concluded at
 7 approximately 1:55 p.m.)
 8
 9
 10 *****
 11 FURTHER DEPONENT SAITH NOT
 12 *****
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23

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1 REPORTER'S CERTIFICATE
 2 STATE OF ALABAMA:
 3 MONTGOMERY COUNTY:
 4 I, Lyn Daugherty, Certified Shorthand
 5 Reporter and Commissioner for the State of Alabama
 6 at Large, do hereby certify that I reported the
 7 deposition of:
 8 RICHARD MARSHALL
 9 who was duly sworn by me to speak the truth, the
 10 whole truth and nothing but the truth, in the
 11 matter of:
 12 RICHARD MARSHALL,
 13 Plaintiff,
 14 vs.
 15 CHRIS WEST, in his individual
 16 capacity, LASHUN HUTSON, in his
 17 individual capacity,
 18 Defendants.
 19 IN THE UNITED STATES DISTRICT COURT
 20 FOR THE MIDDLE DISTRICT OF ALABAMA
 21 NORTHERN DIVISION
 22 Civil Action No. 2:06-cv-701-ID.CSC
 23 on Wednesday, November 14, 2007.

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1 The foregoing 155 computer-printed pages
 2 contain a true and correct transcript of the
 3 examination of said witness by counsel for the
 4 parties set out herein. The reading and signing is
 5 hereby waived.
 6 I further certify that I am neither of kin
 7 nor of counsel to the parties to said cause nor in
 8 any manner interested in the results thereof.
 9 This 13th day of December 2007.
 10
 11
 12
 13 Lyn Daugherty, ACCR #66
 14 Expiration Date: 9-30-2008
 15 Certified Court Reporter
 16 And Commissioner for the
 17 State of Alabama at Large
 18
 19
 20
 21
 22
 23

DEPOSITION OF KELVIN CARMICHAEL

November 14, 2007

Pages 1 through 89

PREPARED BY:

Haislip, Ragan, Green, Starkie & Watson, P.C.

566 South Perry Street

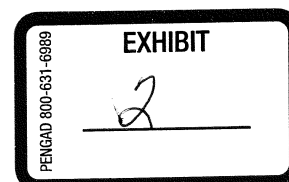
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Page 1

Page 3

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4
5 RICHARD MARSHALL,
6 Plaintiff,

7 vs. CIVIL ACTION NO.
2:06-cv-701-ID.CSC

8
9 CHRIS WEST, in his individual
capacity, LASHUN HUTSON, in his
individual capacity,

10 Defendants.

11 *****

12
13 DEPOSITION OF KELVIN CARMICHAEL, taken
14 pursuant to stipulation and agreement before Lyn
15 Daugherty, ACCR #66, Certified Court Reporter and
16 Commissioner for the State of Alabama at Large, in
17 the Law Offices of Webb & Eley, 7475 Halcyon Pointe
18 Drive, Montgomery, Alabama, on Wednesday, November
19 14, 2007, commencing at approximately 1:55 p.m.

20 *****

Page 2

Page 4

1 APPEARANCES

2 FOR THE PLAINTIFF:

3 Mr. Jay Lewis
4 Mr. Fred L. Clements
5 LAW OFFICES OF JAY LEWIS
Attorneys at Law
6 847 South McDonough Street
Montgomery, Alabama 36104

7 FOR THE DEFENDANT WEST:

8 Mr. Gary Wilford
9 Mr. Daryl L. Masters
10 WEBB & ELEY, P.C.
Attorneys at Law
11 7475 Halcyon Pointe Drive
P.O. Box 240909
Montgomery, Alabama 36124

12 ALSO PRESENT: Mr. Richard Marshall

13 *****

14 EXAMINATION INDEX

15
16 KELVIN CARMICHAEL

17 BY MR. WILFORD 4

18 EXHIBIT INDEX

19 MAR

20 Defendant

21 13 Photograph

22 73

1 STIPULATIONS

2 It is hereby stipulated and agreed by and
3 between counsel representing the parties that the
4 deposition of KELVIN CARMICHAEL is taken pursuant
5 to the Federal Rules of Civil Procedure and that
6 said deposition may be taken before Lyn Daugherty,
7 Certified Shorthand Reporter, and Commissioner for
8 the State of Alabama at Large, without the
9 formality of a commission, that objections to
10 questions other than objections as to the form of
11 the question need not be made at this time but may
12 be reserved for a ruling at such time as the said
13 deposition may be offered in evidence or used for
14 any other purpose by either party provided for by
15 the Statute.

16 It is further stipulated and agreed by and
17 between counsel representing the parties in this
18 case that the filing of said deposition is hereby
19 waived and may be introduced at the trial of this
20 case or used in any other manner by either party
21 hereto provided for by the Statute regardless of
22 the waiving of the filing of the same.

23 It is further stipulated and agreed by and

1 between the parties hereto and the witness that the
2 signature of the witness to this deposition is
3 hereby waived.

4 *****

5 KELVIN CARMICHAEL

6 The witness, after having first been duly sworn
7 to speak the truth, the whole truth and nothing but
8 the truth testified as follows:

9 EXAMINATION

10 BY MR. WILFORD:

11 Q. Would you please state your name for the
12 record, sir.

13 A. Kelvin Carmichael.

14 Q. Could you spell your first name for me,
15 please.

16 A. K-E-L-V-I-N.

17 Q. Is it pronounced Kevin or Kelvin?

18 A. Kelvin.

19 Q. Mr. Carmichael, have you ever given a
20 deposition before?

21 A. No.

22 Q. What we've got here is we've got a court
23 reporter who is going to be taking down

Page 5

1 every word you and I say and anybody else
 2 says here in the courtroom today -- I'm
 3 sorry -- this conference room today. And
 4 so it's going to be important that we stick
 5 to certain rules as we're going through
 6 this thing. And one of those is that I
 7 need you to wait until I finish asking you
 8 a question before you answer it; all right?
 9 A. (Witness nods head).
 10 Q. And one of the things that I need you to do
 11 when you answer it, unlike what you did
 12 right there, is answer out loud for me
 13 either yes, no, or whatever the explanation
 14 might be, because it's very difficult for
 15 her to get down head shakes and noddings of
 16 the head like you just did there; all
 17 right?
 18 A. All right.
 19 Q. And as we kind of go through this, if you
 20 do that, hopefully I'll catch it and remind
 21 you of it. If I ask you a question and you
 22 don't understand the question, let me know
 23 and I'll be happy to rephrase it for you.

Page 6

1 A. All right.
 2 Q. Because what I'm going to do is if I ask
 3 you a question and you answer me, I'm going
 4 to assume you understood my question. Is
 5 that fair?
 6 A. Yes.
 7 Q. If for whatever reason you need a break,
 8 let me know. We can go ahead and take a
 9 break. I think you noticed during
 10 Mr. Marshall's deposition we took a couple
 11 of breaks. And all you've got to do is
 12 just let me know and we can do that; all
 13 right?
 14 A. All right.
 15 Q. Okay. In preparing for your deposition
 16 today, did you speak with anyone?
 17 A. No.
 18 Q. You didn't speak with Mr. Marshall?
 19 A. He called me and told me that we had to
 20 come here.
 21 Q. Is that all he told you?
 22 A. Yes.
 23 Q. When did he call you?

Page 7

1 A. The day before we had to go meet at his
 2 office.
 3 Q. Who is his office?
 4 A. We went to talk to him because they wanted
 5 to see me.
 6 Q. You're saying him. I don't know who him
 7 is.
 8 A. I don't know his --
 9 Q. This gentleman sitting next to you right
 10 here?
 11 A. Yes.
 12 Q. From Mr. Lewis's office?
 13 A. Yes.
 14 Q. And y'all spoke about this deposition here
 15 today?
 16 A. They just told us that we had to come here
 17 and how to get here and all that.
 18 Q. Did you talk about your testimony with him?
 19 A. No.
 20 Q. Did they ask you about the facts of the
 21 case?
 22 A. No.
 23 Q. Did you look at any documents?

Page 8

1 A. No.
 2 Q. What's your date of birth?
 3 A. September 25th, 1980.
 4 Q. That makes you 27; is that right?
 5 A. Yes.
 6 Q. Where were you born?
 7 A. Montgomery.
 8 Q. Do you work right now?
 9 A. Yes.
 10 Q. Where do you work?
 11 A. At Quincy's Triple Seven in Shorter.
 12 Q. How long have you been at Quincy's Triple
 13 Seven?
 14 A. Almost three weeks.
 15 Q. And what do you do for them?
 16 A. Housekeeping.
 17 Q. Did you work before Quincy's Triple Seven?
 18 A. Yes.
 19 Q. Who did you work for?
 20 A. I worked for Big Lots.
 21 Q. When did you work for Big Lots?
 22 A. About four years. But up until then I've
 23 been working with my uncle painting. Up

Page 9

1 until now --
 2 Q. So you were working -- I'm sorry.
 3 A. Up until now when I stopped working at Big
 4 Lots. I think it was in '05, '06,
 5 something like that.
 6 Q. That's when you started or when you
 7 stopped?
 8 A. When I stopped.
 9 Q. When did you start with them?
 10 A. I think it was in '01, '02.
 11 Q. And you said after you left Big Lots you
 12 worked with your uncle?
 13 A. Painting.
 14 Q. Did you work at Big Lots the same time
 15 Mr. Marshall did?
 16 A. Huh-uh (negative response).
 17 Q. Is that a no?
 18 A. No.
 19 Q. What about before Big Lots, who did you
 20 work for, if anybody, then?
 21 A. Long John Silver.
 22 Q. Where at?
 23 A. On Norman Bridge Road.

Page 10

1 Q. How long did you work for them?
 2 A. I worked for them when I was in school
 3 since about '98.
 4 Q. Why did you leave Long John Silver's?
 5 A. Because I started working at Big Lots.
 6 Q. And then why did you leave Big Lots?
 7 A. I got terminated.
 8 Q. And why did you get terminated?
 9 A. Missing too many days.
 10 Q. Have you ever been married?
 11 A. No.
 12 Q. Where do you live?
 13 A. Norman Bridge Road.
 14 Q. What's the address there?
 15 A. 3468 Apartment A.
 16 Q. Did you graduate from high school?
 17 A. Yes.
 18 Q. What high school did you graduate from?
 19 A. Sidney Lanier.
 20 Q. And when did you graduate?
 21 A. '99.
 22 Q. Have you ever been to college?
 23 A. No.

Page 11

1 Q. Ever been to trade school?
 2 A. No.
 3 Q. How long have you lived on Norman Bridge
 4 Road?
 5 A. About three months.
 6 Q. Where did you live before that?
 7 A. Davenport Drive.
 8 Q. Is that in Montgomery?
 9 A. Yes.
 10 Q. What's the street number there?
 11 A. I'm not really sure of that. I just know
 12 it's Davenport because I was staying there
 13 with a girl. But it wasn't nothing but
 14 like a year.
 15 Q. How long did you live on Davenport Drive?
 16 A. About a year.
 17 Q. So that would have been about '06; is that
 18 right?
 19 A. Yes.
 20 Q. And where did you live before that?
 21 A. In Stone Crossing.
 22 Q. Where is that?
 23 A. On Woodley Road.

Page 12

1 Q. How long did you live in Stone Crossing?
 2 A. About six months.
 3 Q. Were you living in Stone Crossing at the
 4 time of the traffic stop that led to this
 5 lawsuit?
 6 A. No.
 7 Q. Where were you -- Then let's keep going
 8 back. Where did you live before Stone
 9 Crossing?
 10 A. I had my own apartment in the Colonies.
 11 But it's Cypress Court now. They changed
 12 the name of it. It's on -- what street --
 13 Troy Highway, right off Troy Highway.
 14 Q. Is that where you were living at the time
 15 of the traffic stop?
 16 A. No. I think I had got put out my apartment
 17 and I had went to stay with my grandmother
 18 for a minute.
 19 Q. So you were living with your grandmother at
 20 that time?
 21 A. I was just staying with her for a minute.
 22 Q. Well, you have to explain to me what you
 23 mean for a minute. How long a time are we

November 14, 2007

Deposition of Kelvin Carmichael

Page 13	Page 15
<p>1 talking about?</p> <p>2 A. It was probably about two, three months,</p> <p>3 something like that.</p> <p>4 Q. Was there anyplace that you lived at</p> <p>5 between your grandmother's house and</p> <p>6 Cypress Court?</p> <p>7 A. No.</p> <p>8 Q. Where is your grandmother's house at?</p> <p>9 A. In Farmersville.</p> <p>10 Q. What's the address there?</p> <p>11 A. I don't know. I just know it's on</p> <p>12 Youngblood Road. I don't know the address.</p> <p>13 Q. So that's not too far from where</p> <p>14 Mr. Marshall was living at the time?</p> <p>15 A. Not that far.</p> <p>16 Q. About how far would you say?</p> <p>17 A. Maybe five, 10 miles, I guess.</p> <p>18 Q. Are you and Mr. Marshall related?</p> <p>19 A. Yes.</p> <p>20 Q. How are you related?</p> <p>21 A. My cousin.</p> <p>22 Q. Do you have any children?</p> <p>23 A. Yes.</p>	<p>1 Q. Have you ever been a party to a lawsuit?</p> <p>2 A. No.</p> <p>3 Q. Never been sued?</p> <p>4 A. No.</p> <p>5 Q. Never sued anybody?</p> <p>6 A. No.</p> <p>7 Q. Have you ever been arrested before?</p> <p>8 A. Yes.</p> <p>9 Q. How many times have you been arrested?</p> <p>10 A. Maybe five times, I guess. Just tickets.</p> <p>11 Q. Okay. I'm not talking about -- What kind</p> <p>12 of tickets are you talking about?</p> <p>13 A. Like tickets that I got I didn't pay and</p> <p>14 they stopped me.</p> <p>15 Q. So you've been arrested five times for not</p> <p>16 paying tickets?</p> <p>17 A. Yes.</p> <p>18 Q. Is that what you're telling me?</p> <p>19 When was the first time you were</p> <p>20 arrested?</p> <p>21 A. That's kind of hard to say. I don't</p> <p>22 remember how long that's been. Maybe 2000.</p> <p>23 Q. Where were you arrested in 2000?</p>
Page 14	Page 16
<p>1 Q. How many?</p> <p>2 A. One.</p> <p>3 Q. How old is the child?</p> <p>4 A. She's five, fixing to be six.</p> <p>5 MR. WILFORD: Can we get the same</p> <p>6 stipulation with this witness,</p> <p>7 Jay, on the relatives?</p> <p>8 MR. LEWIS: Right.</p> <p>9 Q. Do you go to church?</p> <p>10 A. No.</p> <p>11 Q. Have you ever gone to church?</p> <p>12 A. Yes.</p> <p>13 Q. Last time you went to church where did you</p> <p>14 go?</p> <p>15 A. Morning Pilgrim.</p> <p>16 Q. Where is that at?</p> <p>17 A. On Rosa Parks.</p> <p>18 Q. In Montgomery?</p> <p>19 A. Yes.</p> <p>20 Q. Have you ever been a member of a union?</p> <p>21 A. No.</p> <p>22 Q. Any kind of social organization?</p> <p>23 A. No.</p>	<p>1 A. Montgomery.</p> <p>2 Q. Who was it that arrested you? City</p> <p>3 police? County police?</p> <p>4 A. City.</p> <p>5 Q. And what specifically did they arrest you</p> <p>6 for?</p> <p>7 A. Warrants for not -- unpaid ticket.</p> <p>8 Q. What was the unpaid ticket?</p> <p>9 A. I think it was a noise ordinance ticket.</p> <p>10 Q. Anything else besides the noise ordinance</p> <p>11 ticket?</p> <p>12 A. At that time?</p> <p>13 Q. Yes, sir.</p> <p>14 A. Just speeding tickets. I got arrested</p> <p>15 like --</p> <p>16 Q. I'm just asking you about the 2000 arrest</p> <p>17 right now. We're going to go through each</p> <p>18 of them.</p> <p>19 A. Not that I remember.</p> <p>20 Q. What happened with that arrest? Were you</p> <p>21 put in jail?</p> <p>22 A. Yes.</p> <p>23 Q. How long did you stay in jail?</p>

Deposition of Kelvin Carmichael

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Page 17

1 A. A few hours.
 2 Q. Did you pay the tickets?
 3 A. Yes.
 4 Q. Is that how you got out?
 5 A. Yes.
 6 Q. What about your second arrest, when was
 7 that?
 8 A. I think it was an unpaid speeding ticket.
 9 Q. Do you remember when that was?
 10 A. No.
 11 Q. How long after the 2000 arrest was it?
 12 A. Maybe a year, year later.
 13 Q. So maybe sometime in '03?
 14 A. Yeah. Yes.
 15 Q. And where were you arrested then?
 16 A. Montgomery.
 17 Q. By the Montgomery Police Department?
 18 A. Yes.
 19 Q. Spend time in jail on that one?
 20 A. Couple of hours.
 21 Q. Did you pay the tickets?
 22 A. Yes.
 23 Q. How about arrest number three, when did

Page 18

1 that take place?
 2 A. Probably was another year later.
 3 Q. So sometime in '04?
 4 A. Yes.
 5 Q. And who arrested you that time?
 6 A. Montgomery city.
 7 Q. And what was that arrest for?
 8 A. I think it was -- I had a driving while
 9 suspended I didn't pay.
 10 Q. What was your driver's license suspended
 11 for?
 12 A. A speeding ticket.
 13 Q. A speeding ticket?
 14 A. Yes.
 15 Q. How did you get your license suspended for
 16 a speeding ticket?
 17 A. Not paying the ticket.
 18 Q. All right. What happened as a result of
 19 the '04 arrest?
 20 A. What happened?
 21 Q. Yes, sir. Were you put in jail again?
 22 A. Yes.
 23 Q. How long were you in jail that time?

Page 19

1 A. Couple hours.
 2 Q. Was it the Montgomery City Jail?
 3 A. Yes.
 4 Q. And what happened with the driving while
 5 suspended charge?
 6 A. I had to pay a fine.
 7 Q. Did you ever get your license back?
 8 A. No.
 9 Q. So sitting here today you don't have a
 10 driver's license?
 11 A. No.
 12 Q. The fourth arrest, when did that take
 13 place?
 14 A. I was arrested about -- I think it was
 15 about two, three months ago.
 16 Q. Sometime in '07?
 17 A. Yes.
 18 Q. What was that arrest for?
 19 A. Smoking in a nightclub.
 20 Q. Smoking in a nightclub?
 21 A. (Witness nods head).
 22 Q. Where was that at?
 23 A. The name of the club? The Martini Bar.

Page 20

1 Q. Is that in Montgomery?
 2 A. Yes.
 3 Q. Who arrested you?
 4 A. I have no idea, because it wasn't the city
 5 and it wasn't the county. But they took me
 6 to the county, though.
 7 Q. The Montgomery County Jail?
 8 A. Yes.
 9 Q. What happened when you got to the
 10 Montgomery County Jail?
 11 A. I stayed there a couple hours and got out.
 12 Q. Was that on bond?
 13 A. Uh-huh (positive response).
 14 Q. What's the bond for smoking in a bar?
 15 A. I think it was about, yeah, 150.
 16 Q. I take it those charges are still
 17 pending --
 18 A. Uh-huh (positive response).
 19 Q. -- or that charge is still pending?
 20 A. I already went to court for it.
 21 Q. What happened?
 22 A. They put me in a class.
 23 Q. Did you have to pay a fine?

Page 21

1 A. Yes.
 2 Q. How much?
 3 A. I think it was like about \$400 and I've got
 4 to pay for the class.
 5 Q. What is the class on? Do you know?
 6 A. Put me in a class with alcoholics and
 7 stuff.
 8 Q. Okay. The fifth arrest, what was that?
 9 A. I haven't been arrested since that.
 10 Q. So really it was four times and not five
 11 times you've been arrested?
 12 A. Yeah. It ain't been nothing but just
 13 tickets.
 14 MR. WILFORD: Off the record.
 15 (Off-the-record discussion.)
 16 Q. Other than this class that you're going to
 17 have to attend for smoking in a bar, have
 18 you ever been treated for alcohol or drug
 19 addiction?
 20 A. No.
 21 Q. Have you ever been treated for mental
 22 illness?
 23 A. No.

Page 22

1 Q. You know the event that we're here on
 2 today; right?
 3 A. Yes.
 4 Q. Something happened out on Highway 21 in
 5 Lowndes County?
 6 A. Yes.
 7 Q. Would you agree with me that that happened
 8 on June 28th of 2005?
 9 A. I'm not sure of the date.
 10 Q. You don't have an independent recollection
 11 of the date?
 12 A. No.
 13 Q. Would you have any reason to disagree that
 14 June 28th, 2005 was the date this occurred?
 15 A. I'm just not sure of the date.
 16 Q. That's fine. Do you remember what you were
 17 doing the day that this occurred?
 18 A. Before or after?
 19 Q. Before.
 20 A. Yes.
 21 Q. What were y'all doing? What were you
 22 doing? Excuse me.
 23 A. Watching them take a motor out of the car.

Page 23

1 Q. Watching who take a motor out of the car?
 2 A. Two of my cousins.
 3 Q. And who were the two cousins?
 4 A. His name is -- because we call him by his
 5 nickname. His name is Herman, though.
 6 Q. And who else?
 7 A. And my other cousin Steven.
 8 Q. Steven?
 9 A. Yes.
 10 Q. Do you know what Herman and Steven's last
 11 names are?
 12 A. I know Steven's last name is Howard. I'm
 13 not sure what Herman's last name is.
 14 Q. Was there anybody else present that day?
 15 A. Yes.
 16 Q. Who?
 17 A. Richard Marshall.
 18 Q. Anybody else?
 19 A. No.
 20 Q. All right. Where were you taking this --
 21 or where were they taking this motor out
 22 at?
 23 A. At my aunt's house.

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1 Q. What's your aunt's name?
 2 A. Gwendolyn Howard.
 3 Q. Where does she live? Where did she live at
 4 the time? Excuse me.
 5 A. Probably about a mile or two from my
 6 grandma's house.
 7 Q. That's in Farmersville?
 8 A. Yes.
 9 Q. When did you first get to your aunt's house
 10 that morning?
 11 A. I'm really not sure what time it was. I
 12 know it was like -- kind of like in the
 13 morning. Maybe ten, nine, something like
 14 that.
 15 Q. How did you get there?
 16 A. In the car with Richard.
 17 Q. How did you come to be in the car with
 18 Richard?
 19 A. Because I spent the night at his house that
 20 night.
 21 Q. The night before?
 22 A. Yes.
 23 Q. What did y'all do the night before?

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1 A. Nothing. Just at his house.
 2 Q. And y'all didn't go anywhere?
 3 A. No.
 4 Q. Did y'all have anything to drink that
 5 night?
 6 A. No.
 7 Q. Do any drugs that night?
 8 A. No.
 9 Q. What time did y'all get up on the morning
 10 of the 28th? And I understand that you
 11 don't have an independent recollection it
 12 was the 28th. I'm just going to use that
 13 as a kind of shorthand for right now.
 14 A. Maybe eight, something like that.
 15 Q. Did you go straight to your aunt's house
 16 from there?
 17 A. Yes.
 18 Q. Did y'all have any breakfast that morning?
 19 A. No.
 20 Q. How long did it take to take that motor out
 21 of the car?
 22 A. Maybe an hour. Probably less than that.
 23 Q. Were they doing anything else while they

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1 were taking the motor out?
 2 A. Nothing but talking and laughing.
 3 Q. Anybody have a beer?
 4 A. No.
 5 Q. Nothing to drink at all?
 6 A. No.
 7 Q. All right. What happened after the motor
 8 was out of the car?
 9 A. Me and my cousin got in the car and we was
 10 on our way back to his house.
 11 Q. In Richard's car?
 12 A. Yes.
 13 Q. What kind of car did Richard have?
 14 A. Blue Nova.
 15 Q. I'm going to show you what was previously
 16 marked as Defendant's Exhibit 2 to Richard
 17 Marshall's deposition. Is that Richard's
 18 car?
 19 A. Yes.
 20 Q. What were you going to do when you got back
 21 to Richard's house?
 22 A. Nothing. Watch TV.
 23 Q. Do you remember what day of the week it

Page 27

1 was?
 2 A. No.
 3 Q. Were y'all meeting anybody at Richard's
 4 house?
 5 A. No.
 6 Q. Between your aunt's house and the time that
 7 you first encountered my client in his car,
 8 did y'all stop anywhere?
 9 A. No.
 10 Q. Who was driving the car?
 11 A. Richard.
 12 Q. Where were you at in the car?
 13 A. In the passenger's side.
 14 Q. Are there any seat belts in that car?
 15 A. Yes.
 16 Q. Were you wearing yours?
 17 A. Yes.
 18 Q. Was Richard wearing his?
 19 A. Yes.
 20 Q. So if Richard says he wasn't, he was
 21 mistaken?
 22 A. He be telling me to put mine on, so I'm
 23 pretty sure he had his on.

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1 Q. Do you actually remember him having his
 2 seat belt on, or you're just pretty sure?
 3 A. I'm sure, because he told me to put mine
 4 on. That's how he drive with his seat belt
 5 on.
 6 Q. Was there any alcohol in that car?
 7 A. No.
 8 Q. Let me show you what was previously marked
 9 as Defendant's Exhibit 3. What was in that
 10 flask?
 11 A. Nothing.
 12 Q. Do you know what had been in that flask?
 13 A. No. But I know nothing was in it, though.
 14 Q. That flask was in the car that day, though;
 15 right?
 16 A. Yeah.
 17 Q. Whose Swishers were those?
 18 A. I don't know.
 19 Q. Were they yours?
 20 A. No.
 21 Q. That was Richard's car, right?
 22 A. Huh?
 23 Q. That was Richard's car, right?

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1 A. Yes.
 2 Q. Do you see anything in Defendant's Exhibit
 3 3 that belonged to you?
 4 A. No.
 5 Q. You see that gun in Defendant's Exhibit 3;
 6 right?
 7 A. Yes.
 8 Q. Whose gun was that?
 9 A. I don't know.
 10 Q. Was it in the car when you got in the car
 11 that morning?
 12 A. Yes.
 13 Q. Where was it when you got in the car that
 14 morning?
 15 A. On the seat.
 16 Q. About where it is in Defendant's Exhibit 3?
 17 A. Yes.
 18 Q. Is that the front seat of Richard's car in
 19 Defendant's Exhibit 3?
 20 A. Yes.
 21 Q. Is that gun loaded?
 22 A. I don't know.
 23 Q. Did you ever pick that gun up?

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1 A. I just seen it and I ain't asked nothing
 2 about it because it wasn't my business,
 3 so ...
 4 Q.- The gun looks to me like it's pointing
 5 toward the passenger's side of the car.
 6 Does that look like it's pointing that way
 7 to you?
 8 A. Yes.
 9 Q. Make you nervous having a gun pointed at
 10 you?
 11 A. No.
 12 Q. So you didn't pay it no mind?
 13 A. No.
 14 Q. All right. Did you ever see Richard with
 15 that gun before?
 16 A. No.
 17 Q. That's the first time you saw it was that
 18 day?
 19 A. Yes. That's why I didn't ask him nothing
 20 about it.
 21 Q. Did Richard usually have a gun?
 22 A. No.
 23 Q. Was that the first time you had ever seen

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1 Richard with a gun?
 2 A. Yes.
 3 Q. So that's the first time you've ever seen
 4 him with a gun and you didn't ask him
 5 anything about it?
 6 A. No.
 7 Q. Do you know if Richard had any money on him
 8 that day?
 9 A. I know he had just sold my cousin a motor,
 10 but I don't know what he sold it for,
 11 though.
 12 Q. Did you see any money change hands?
 13 A. Not really. But he told me that my cousin
 14 was fixing to buy it. That's why we went
 15 over there to watch him take it out.
 16 Q. But you didn't see him give him any money;
 17 right?
 18 A. Not at the time.
 19 Q. Did you ever see him give him any money
 20 later?
 21 A. No. I know my cousin told me he bought the
 22 motor from him.
 23 Q. Which cousin was that?

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1 A. Herman.
 2 Q. Did you ever actually see Richard with any
 3 money that day?
 4 A. Yes.
 5 Q. When did you see him with money?
 6 A. That morning before we left.
 7 Q. How much did he have on him? Were you able
 8 to see how much?
 9 A. No.
 10 Q. Were you able to see any particular bill?
 11 A. No.
 12 Q. How was he carrying the money?
 13 A. In his pocket.
 14 Q. Did he just take it out and show it to you?
 15 A. No. We were fixing to go to the store and
 16 get some gas, but he just said we're going
 17 to go ahead on down there because they were
 18 waiting on us.
 19 Q. Okay. So how did you seeing his money come
 20 into play there?
 21 A. Because he was counting it because he said
 22 he was fixing to go get gas, but he was
 23 going to go ahead on and go to my auntie's

Page 33

1 house first and he would just get it when
 2 we left there.
 3 Q. All right. When was the first time you
 4 noticed the car that my client was in?
 5 A. When they pulled up on the side with a
 6 pistol.
 7 Q. Where was that at?
 8 A. The same road that you turn off to go to my
 9 grandmother's house. It wasn't 21. I'm
 10 not for sure what the name of the road
 11 was. But I remember them pulling up on the
 12 side of us with a gun.
 13 Q. That's the first time you saw them?
 14 A. Yeah.
 15 Q. You didn't see them at any point before
 16 that?
 17 A. No.
 18 Q. What happened when they pulled up alongside
 19 of you?
 20 A. He was pointing the gun and pointing at the
 21 side of the road and telling us to pull
 22 over.
 23 Q. Who was he?

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1 A. The guy on the passenger's side.
 2 Q. Do you know who was on the passenger's
 3 side?
 4 A. No. I never saw them before. They had on
 5 regular clothes.
 6 Q. Have you learned since then who was on the
 7 passenger's side?
 8 A. I know now he was the police, but I don't
 9 know his name.
 10 Q. That's what I'm asking you. Have you found
 11 out what his name was?
 12 A. No.
 13 Q. Can you describe him for me?
 14 A. I know he was like -- he wasn't that tall.
 15 Had a low haircut all over. Kind of slim
 16 guy. He wasn't that big, not like the
 17 driver.
 18 Q. Black guy? White guy?
 19 A. Who? The passenger?
 20 Q. Yes, sir.
 21 A. Black guy.
 22 Q. Did he have any facial hair?
 23 A. Yes. I think he had a mustache.

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1 Q. Just a mustache?
 2 A. I think he did. He might have had a
 3 full -- I know he just had a little beard
 4 or something, I guess. I wasn't really
 5 looking at him like that.
 6 Q. You got a chance to look at him later,
 7 though; right?
 8 A. Uh-huh (positive response).
 9 Q. Were you able to see the driver?
 10 A. Yes.
 11 Q. Did you know who the driver was prior to
 12 that time?
 13 A. No.
 14 Q. Have you since learned who the driver was?
 15 A. Yes.
 16 Q. Who was the driver?
 17 A. Guy named Chris West.
 18 Q. And you didn't know Chris prior to this?
 19 A. No. I never saw neither one of them.
 20 Q. Did you know of either one of them prior to
 21 this?
 22 A. No.
 23 Q. All right. So the car pulls up next to you

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1 and you said he had a gun?
 2 A. Yeah.
 3 Q. What kind of gun are we talking about?
 4 A. I just know it was black. Because when I
 5 seen him, I asked my cousin who is it, and
 6 he say he don't know, might be somebody
 7 trying to rob him or something. So -- I
 8 don't know.
 9 Q. Were you able to hear your cousin say that?
 10 A. Huh?
 11 Q. You were able to hear Richard say that?
 12 A. When I asked him who is it, I heard him say
 13 he didn't know.
 14 Q. What hand did the person with the gun have
 15 the gun in?
 16 A. I think it was his right because he was
 17 pointing with his -- this arm right here
 18 (indicating). He was telling us to pull
 19 over.
 20 Q. How was he holding the gun?
 21 A. Pointing it at us through his window.
 22 Q. You say he was pointing it at you and using
 23 his other hand to point to the side of the

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1 road?
 2 A. Yes.
 3 Q. What did Richard do, if anything, when he
 4 did that?
 5 A. We speeded up because we didn't know who
 6 they was. They was in regular clothes in a
 7 regular car, so we speeded up.
 8 Q. What happened after you sped up? Let me
 9 back up. I'm sorry. Did Richard say
 10 anything to them?
 11 A. No, not that I remember.
 12 Q. Was there anything going on that would
 13 prevent you from hearing what Richard might
 14 have said to them?
 15 A. He had the radio on, but I would have heard
 16 if he said anything. I mean, he didn't say
 17 nothing to them because they had their
 18 windows up and his window was down -- well,
 19 our window was down.
 20 Q. Richard's window was down, but their window
 21 was up?
 22 A. (Witness nods head).
 23 Q. So he's pointing through the glass with the

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1 gun? Is that what you're telling me?
 2 A. Yes.
 3 Q. What kind of car did they have?
 4 A. It was a Lincoln.
 5 Q. Do you remember anything else about the
 6 car?
 7 A. I think it was like a dark gray.
 8 Q. Was it a newer one or an older one?
 9 A. It was a newer one, but not that new. I
 10 think it was like about '98, '99. It
 11 wasn't no old model.
 12 Q. Did you see anything that stood out on the
 13 car; antennas, license plates, anything
 14 like that?
 15 A. No. It was just regular car.
 16 Q. Did you see any blue lights on the vehicle?
 17 A. No.
 18 Q. The road that you were on when the car came
 19 up alongside of you, is that a two-lane or
 20 four-lane or some other lane?
 21 A. Two.
 22 Q. All right. So you said Richard sped up.
 23 What happened after he sped up?

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1 A. They got behind us.
 2 Q. Did you watch them?
 3 A. I was looking in the rear view mirror, like
 4 the little mirror on the side. But I was
 5 just looking at the car. I wasn't watching
 6 them.
 7 Q. You didn't turn around and look at them?
 8 A. Huh-uh (negative response). I was trying
 9 to tell him to go because I thought it was
 10 somebody trying to rob us, too, or rob him
 11 and they had a gun. I ain't trying to get
 12 shot.
 13 Q. Have you ever heard of any problems like
 14 that happening in that part of the county
 15 before?
 16 A. What? People getting robbed?
 17 Q. Well, people coming up alongside in cars
 18 and trying to rob people in a car.
 19 A. No. But I'm from Montgomery. I know it
 20 happens.
 21 Q. Okay. So you're watching in the side view
 22 mirror. What happens next?
 23 A. We turned on the road to go home.

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1 Q. And what road is that that you turned on to
 2 go home?
 3 A. I think that's -- I think it's 21.
 4 Q. Which way did you turn?
 5 A. Right.
 6 Q. Is that an intersection there that you
 7 turned at?
 8 A. Yes.
 9 Q. Is there a stop sign, traffic light,
 10 something there?
 11 A. A yellow flashing light.
 12 Q. Did Richard stop at that light?
 13 A. He yield. He slowed down. But then we
 14 took off again because we didn't know who
 15 they was.
 16 Q. Did he ever actually stop, though, at the
 17 intersection?
 18 A. No. Because there's a yield sign.
 19 Q. Was there any traffic around?
 20 A. No. Not at that time.
 21 Q. Had you seen any other cars besides yours
 22 and the Lincoln --
 23 A. No.

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1 Q. -- up to that point?
 2 A. No.
 3 Q. What happened when you made the right onto
 4 Highway 21?
 5 A. We took off again.
 6 Q. After the Lincoln fell in behind you before
 7 the turn, did y'all -- you and Richard talk
 8 about anything up until you turned right on
 9 21?
 10 A. No. Because I was really scared. I was
 11 wondering myself who they was.
 12 Q. You did say you were urging him to go on;
 13 right?
 14 A. Because I didn't know who it was, yes.
 15 Q. What did you tell him?
 16 A. I just kept asking him who that is, and he
 17 just kept shrugging his shoulders he didn't
 18 know. And I didn't know, so I just told
 19 him, man, don't let them catch us because
 20 we don't know who they is -- well, I don't
 21 know who they is and then they're pointing
 22 a gun too.
 23 Q. Did Richard appear to be mad?

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1 A. No.
 2 Q. He didn't yell at anybody up to that point?
 3 A. No.
 4 Q. All right. You make the right-hand turn
 5 onto Highway 21. What happens next?
 6 A. We rode down a little while and they were
 7 still behind us. And they ran to the back
 8 of the car.
 9 Q. So they followed behind you and then just
 10 ran into the back of the car?
 11 A. Yes.
 12 Q. How long from the time you turned right
 13 onto 21 until they ran into the back of the
 14 car?
 15 A. Maybe it was about a mile.
 16 Q. How fast was Richard going at that point?
 17 A. I don't know.
 18 Q. Did he go faster than he had been before he
 19 turned off, about the same speed or slower?
 20 A. It was about the same speed.
 21 Q. Did you turn around at any point while you
 22 were on Highway 21 to look at the car
 23 behind you?

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1 A. After they hit us the second time that's
 2 when I looked back.
 3 Q. After they hit you the second time?
 4 A. (Witness nods head).
 5 Q. Prior to them hitting you, did you turn
 6 around and look back at them?
 7 A. No.
 8 Q. What happened when, as you said, they ran
 9 into you the first time?
 10 A. I just was like, they done hit us. Because
 11 by the time I was fixing to turn around
 12 again and they hit us again. That's when I
 13 turned around and looked.
 14 Q. Let's just keep talking about the first
 15 time for right now; okay?
 16 A. Uh-huh (positive response).
 17 Q. How hard a hit was it?
 18 A. Enough to turn the back of the car a little
 19 bit.
 20 Q. Turn it how?
 21 A. Like the back end swerved a little, like
 22 swerved to the right like they were trying
 23 to knock us off the road.

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1 Q. Did you actually see the Lincoln hit you?
 2 A. I know it was them because they were right
 3 behind us.
 4 Q. I understand that. What I'm asking you is,
 5 were you able to see them actually hit
 6 you? Were you looking at them when they
 7 hit you?
 8 A. Not the first time.
 9 Q. So you said it knocked -- it swerved the
 10 back end a little bit?
 11 A. (Witness nods head).
 12 Q. Did it do anything else to the car?
 13 A. No.
 14 Q. They hit you a second time; is that right?
 15 A. Yes.
 16 Q. How much time passed between the first time
 17 they hit you and the second time they hit
 18 you?
 19 A. Maybe a couple of seconds.
 20 Q. And did you tell me that you were able to
 21 turn around then and look at the car?
 22 A. After they hit us the second time?
 23 Q. No. Between the first time and the second

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1 time.
 2 A. I was fixing to look when they hit us the
 3 first time. But by the time I looked, they
 4 hit us again. And I turned back around to
 5 make sure we wasn't fixing to go off the
 6 road. Then I turned back and looked again.
 7 Q. After the second time?
 8 A. Yes.
 9 Q. Tell me about the second hit. How hard was
 10 it?
 11 A. Probably about the same as the first.
 12 Q. Did the speed of Richard's car change
 13 between the first time and the second time?
 14 A. A little, because when they hit us, it was
 15 like it knocked us forward a little bit.
 16 Q. So up until the second time they hit you,
 17 you still hadn't had a chance to turn
 18 around and look back; right?
 19 A. Huh-uh (negative response). I almost did
 20 after the first one. But when they hit us
 21 I turned back around to make sure we wasn't
 22 going off the road.
 23 Q. After they hit you the second time, what

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1 grabbing him around his neck and people
 2 were stopping. Then he grabbed something
 3 and put it on top of the car.
 4 Q. All right. At what point did you tell
 5 Richard that it was the police behind you?
 6 A. I said, I think it's the police, and then
 7 he started talking in the thing. But by
 8 then he had hit us again and knocked us off
 9 the road.
 10 Q. Did you start to say that before that third
 11 hit or after the third hit?
 12 A. It was like time I was saying it he was
 13 running into us again. And that time he
 14 knocked us off the road.
 15 Q. So you did recognize then that it was the
 16 police that was behind you?
 17 A. I ain't -- I wasn't sure it was the
 18 police. I said I think it's the police
 19 because I saw him talking in a CB. And I'm
 20 pretty sure if somebody robbing you they
 21 probably wouldn't have no CB.
 22 Q. Had Richard ever said anything to you
 23 before about being robbed?

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1 happened?
 2 A. That's when I turned around and looked.
 3 And it looked like he was on the radio or
 4 something. So I said --
 5 Q. What made you think he was on the radio?
 6 A. Because I saw him with something in his
 7 hand talking in it.
 8 Q. Can you describe for me what it was in his
 9 hand that he was talking into?
 10 A. Looked like a CB.
 11 Q. Did you see anything else besides the CB --
 12 what you described as looking like a CB?
 13 A. No.
 14 Q. How long were you able to look back?
 15 A. Maybe a couple seconds, because that's when
 16 he hit us again and he went off the road
 17 that time.
 18 Q. Who was it that was talking on the CB? Was
 19 it the driver or the passenger?
 20 A. The passenger.
 21 Q. Did you see any blue lights at that time?
 22 A. No. I didn't see any lights until after
 23 people was pulling over and they were

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1 A. No.
 2 Q. So you didn't know before that day that
 3 he'd said he had been robbed before?
 4 A. No.
 5 Q. From the time you turned onto Highway 21
 6 until they hit you that third time, did you
 7 see any other cars on the road?
 8 A. No.
 9 Q. Did you see Richard throw something out the
 10 window?
 11 A. No.
 12 Q. You did see his arm out the window, though;
 13 right?
 14 A. He rides with his arm on his mirror.
 15 Q. Well, was he riding with his arm on the
 16 mirror at the time?
 17 A. Talking about at the time when they was
 18 riding behind us like that?
 19 Q. Right.
 20 A. I wasn't really paying attention to his
 21 hand then, not to be riding with it on the
 22 mirror, because I was scared.
 23 Q. Afterwards you made a statement, didn't

Page 49

1 you?
 2 A. Yes.
 3 Q. And you told the police at that time that
 4 you had put your -- or that he -- sorry.
 5 Told the police at that time that you saw
 6 that he put his arm out the window?
 7 A. Put his arm out the window?
 8 Q. Actually what you said was I saw that he
 9 put his arm out the window.
 10 A. Probably on his mirror, because he usually
 11 drive holding his mirror while he drives.
 12 Q. You didn't tell the police he was holding
 13 his mirror, though, did you? Let me show
 14 you Defendant's Exhibit 6. See if you can
 15 show for me there where you said he had his
 16 hand on the mirror.
 17 A. No.
 18 Q. It doesn't say that, does it?
 19 A. No.
 20 Q. Just say he had his arm out the window;
 21 right?
 22 A. I'm looking for where it says that at.
 23 Q. Starting right here.

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1 A. Uh-huh (positive response).
 2 Q. That is your statement that you made to the
 3 police, right, Defendant's Exhibit 6?
 4 A. Yes.
 5 Q. Did you have a cell phone that day?
 6 A. No.
 7 Q. Did Richard?
 8 A. No.
 9 Q. What happened to that gun that was on the
 10 seat there while all this bumping was going
 11 on?
 12 A. What happened to it?
 13 Q. Uh-huh (positive response). If anything.
 14 A. Nothing.
 15 Q. Where was it while all of this bumping was
 16 going on?
 17 A. Up on the seat.
 18 Q. Still right there on the seat?
 19 A. Yes.
 20 Q. Wasn't moving around at all?
 21 A. No.
 22 Q. Still pointing at you?
 23 A. I guess. I wasn't really paying attention

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1 if he was pointing at me.
 2 Q. Did you ever ask Richard to stop and let
 3 you out of the car?
 4 A. No.
 5 Q. Okay. What happened after that third hit?
 6 A. He went off the road.
 7 Q. How did you go off the road? Describe that
 8 for me.
 9 A. The car spun around, almost turned over,
 10 but it didn't.
 11 Q. Which way did it go off the road?
 12 A. To the left.
 13 Q. Did it cross over the center line?
 14 A. Yes.
 15 Q. You said it almost turned over. How did it
 16 almost turn over?
 17 A. Because it's like they hit the edge of his
 18 bumper and it spun us around. And the car
 19 felt like it was fixing to turn over, but
 20 it didn't once we went off in the grass.
 21 Q. On the opposite side of the road?
 22 A. Yeah.
 23 Q. Let me show you what we marked as

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1 Defendant's Exhibit 8. Is that where
 2 the -- where Richard's car wound up?
 3 A. Yes.
 4 Q. While it was spinning, what happened inside
 5 of the car?
 6 A. Nothing happened. When it stopped, he was
 7 fixing to get out. That's when they shot
 8 right there at the ground.
 9 Q. We're not quite to that point yet. We'll
 10 get to that in a minute. Did anything fly
 11 around inside the car? You know, did you
 12 hit anything inside the car? Did anything
 13 hit you?
 14 A. Huh-uh (negative response).
 15 Q. Nothing happened inside the car while it
 16 was spinning?
 17 A. No.
 18 Q. Did either you or Richard say anything
 19 while the car was spinning?
 20 A. No. I was trying to hold on because I
 21 thought the car was fixing to turn over.
 22 Q. Did you see when the Lincoln hit your car
 23 that third time?

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1 A. Uh-huh (positive response).
 2 Q. How did it hit you the third time?
 3 A. Just like he put the edge of his bumper
 4 on -- on the corner of my cousin's bumper.
 5 Q. The edge of his front bumper?
 6 A. Yeah. Like the driver's side, he pushed it
 7 with the passenger's side of my cousin's
 8 car.
 9 Q. And you were looking at him when that
 10 happened?
 11 A. (Witness nods head).
 12 Q. Did Richard's car hit anything between the
 13 time that it was hit the third time and the
 14 time that it came to rest?
 15 A. Huh-uh (negative response).
 16 Q. Is that a no?
 17 A. No.
 18 Q. Did you suffer any injuries at all in -- or
 19 as a result of the car being forced off the
 20 road?
 21 A. No.
 22 Q. Was Richard hurt?
 23 A. No.

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1 Q. Okay. What happened with the Lincoln after
 2 y'all were spun out?
 3 A. They pulled up right in like on the side of
 4 the car.
 5 Q. About like what you see there in
 6 Defendant's 8?
 7 A. About like that. Like they were back a
 8 little bit.
 9 Q. Okay. Is that the Lincoln in Defendant's
 10 Exhibit 8 that we can just barely see there?
 11 A. Yes.
 12 Q. What happened once everybody came to a rest
 13 or a stop?
 14 A. They got out the car. And when my cousin
 15 was getting out, they shot like right at
 16 the door.
 17 Q. Let's take this kind of slow and walk
 18 through this whole thing. They got out of
 19 the car; is that right?
 20 A. Yes.
 21 Q. Did you get out of the car?
 22 A. I was fixing to get out.
 23 Q. Did you actually get out?

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1 A. No. I was fixing to, though, until they
 2 shot.
 3 Q. Did Richard get out?
 4 A. He was fixing to.
 5 Q. When they got out of the car -- the two
 6 officers I'm talking about -- did they say
 7 anything?
 8 A. They got out and pointed the guns.
 9 Q. Did they say anything?
 10 A. Not that I recall.
 11 Q. Were you able to see any badges on them at
 12 that point?
 13 A. Yeah. After they pulled them out of their
 14 shirts.
 15 Q. When did they pull them out of their
 16 shirts?
 17 A. When they jumped out of the car and they
 18 pointed their guns.
 19 Q. So they jumped out of the car pointing
 20 their guns, pull their badges out of their
 21 shirts?
 22 A. Because they was on a chain.
 23 Q. Around their necks?

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1 A. (Witness nods head).
 2 Q. Did they give any commands to get on the
 3 ground?
 4 A. Not when they first -- at first they
 5 didn't.
 6 Q. So at some point they did?
 7 A. They told him to get out the car.
 8 Q. Told him to get out of the car first?
 9 A. Uh-huh (positive response).
 10 Q. Did he do that?
 11 A. Yes.
 12 Q. How far did he get out of the car?
 13 A. Just standing up in the doorway.
 14 Q. Where were his hands?
 15 A. On his side until they told him to put them
 16 up.
 17 Q. Until they told him to put his hands up?
 18 A. Yes.
 19 Q. Did he put his hands up?
 20 A. Yes.
 21 Q. Where were your hands while all this was
 22 going on?
 23 A. In my lap. I was still in the car.

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1 Q. Were you watching what was going on?
 2 A. Yeah.
 3 Q. Were any of the guns pointed at you?
 4 A. When he walked on my side.
 5 Q. I'm talking about that point right there in
 6 time when Richard is out of the car with
 7 his hands up. Is anybody pointing their
 8 guns at you?
 9 A. He was like standing right in front of me,
 10 so it was like they were pointing them at
 11 me.
 12 Q. So Richard was between you and them; is
 13 that right?
 14 A. Yes.
 15 Q. All right. Richard puts his hands up.
 16 What happens next?
 17 A. They put the handcuffs on him and started
 18 snatching him around.
 19 Q. Hang on just a second because we're
 20 skipping something here obviously. Because
 21 you told me there was a shot fired
 22 somewhere in here and there was some
 23 commands to get on the ground. So let's go

1 shot.
 2 Q. So you were able to see past Richard to
 3 where this round hit?
 4 A. How the car was it was like my side was up
 5 on the hill, so I look at the ground
 6 from -- with his door open.
 7 Q. Okay. Fair enough. How far from the car
 8 did the round hit?
 9 A. It was like right by if he would have
 10 stepped out.
 11 Q. Let's look at Defendant's Exhibit 2. Show
 12 for me on Defendant's Exhibit 2 where that
 13 round hit.
 14 A. Maybe right there somewhere.
 15 Q. All right. So you were showing -- Please
 16 put your finger back there. I need to
 17 describe it for the record. You've got
 18 your finger it looks like right in between
 19 the front door and the back door; is that
 20 right?
 21 A. Uh-huh (positive response).
 22 Q. And at least the way the picture is kind of
 23 at the bottom -- even with the bottom of

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1 back. After Richard puts his hands up,
 2 what's the next thing that happens?
 3 A. They shot before they told me to get out.
 4 At the time the car stopped, he opened the
 5 door. That's when they shot.
 6 Q. He was still in the car?
 7 A. Uh-huh (positive response).
 8 Q. How much time passed between the time that
 9 they told him to get out of the car and
 10 there was a shot fired?
 11 A. Maybe 30 seconds.
 12 Q. Where was the shot fired?
 13 A. Like right at the ground with -- if he
 14 would have stepped out where his foot would
 15 have been like right at the door.
 16 Q. Explain to me how you were able to see that
 17 if he wasn't out of the car yet.
 18 A. Because I can see the dirt jumping off the
 19 ground.
 20 Q. Was the car door open?
 21 A. Yes.
 22 Q. But Richard was still in the car?
 23 A. Yeah. He was fixing to get out, but they

1 the front door --
 2 A. Uh-huh (positive response).
 3 Q. -- where it's open?
 4 MR. MASTERS: Is that yes or no?
 5 A. Yes.
 6 Q. About how far in feet would you say that
 7 was from the car?
 8 A. Maybe one.
 9 Q. Other than the badges and the guns, did you
 10 see any other kind of equipment on the two
 11 officers?
 12 A. I think they had handcuffs.
 13 Q. Anything else?
 14 A. No.
 15 Q. Do you know what a Taser is?
 16 A. Yes.
 17 Q. You've seen one before?
 18 A. Yes.
 19 Q. Did they have a Taser?
 20 A. No.
 21 Q. Do you know what pepper spray is?
 22 A. Yes.
 23 Q. Did they have pepper spray?

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<p>1 A. No.</p> <p>2 Q. Other than telling Richard to get out of</p> <p>3 the car, did they say anything else before</p> <p>4 firing a shot?</p> <p>5 A. No.</p> <p>6 Q. Did they identify themselves as police?</p> <p>7 A. Yeah. After they shot.</p> <p>8 Q. After they shot. How long after they shot?</p> <p>9 A. Probably a couple of seconds.</p> <p>10 Q. What did they say to identify themselves as</p> <p>11 police?</p> <p>12 A. They pulled their badges out of their</p> <p>13 shirts and said they was the police.</p> <p>14 Q. Okay. You told me just a minute ago they</p> <p>15 pulled their badges out of their shirt as</p> <p>16 they were getting out of the car.</p> <p>17 A. I'm saying when they first got out of the</p> <p>18 car they shot. Then he pulled the badge</p> <p>19 out of his shirt.</p> <p>20 Q. Did they tell him to get out of the car</p> <p>21 before or after they pulled the badges out?</p> <p>22 A. After.</p> <p>23 Q. How many times did they shoot?</p>	<p>1 Q. And that's where that gun was, wasn't it?</p> <p>2 A. It was like in the middle of the seat.</p> <p>3 Q. But it was to his right side; correct?</p> <p>4 A. Uh-huh (positive response).</p> <p>5 Q. Is that a yes?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Let's move forward in time. Richard</p> <p>8 has gotten out of the car. He's got his</p> <p>9 hands up?</p> <p>10 A. Uh-huh (positive response).</p> <p>11 Q. Now what happens?</p> <p>12 A. They put the handcuffs on him.</p> <p>13 Q. Was he ordered to get to the ground?</p> <p>14 A. Yes.</p> <p>15 Q. Did he go to the ground?</p> <p>16 A. Yes.</p> <p>17 Q. By himself?</p> <p>18 A. Halfway by himself until they started</p> <p>19 grabbing him.</p> <p>20 Q. So he tried to go to the ground before they</p> <p>21 grabbed him? Is that what you're telling</p> <p>22 me?</p> <p>23 A. Yeah. He was going to the ground getting</p>
Page 62	Page 64
<p>1 A. One.</p> <p>2 Q. Who was it that shot?</p> <p>3 A. I'm not sure which one of them shot.</p> <p>4 Q. When they got out of the car, how far out</p> <p>5 of the car did they go?</p> <p>6 A. Like behind the door.</p> <p>7 Q. So the one who got out of the passenger's</p> <p>8 side, where did he go?</p> <p>9 A. He was behind his door.</p> <p>10 Q. And the driver?</p> <p>11 A. Behind his door.</p> <p>12 Q. Where was the gun in your car while all</p> <p>13 this was going on?</p> <p>14 A. On the seat.</p> <p>15 Q. Where were Richard's hands?</p> <p>16 A. When?</p> <p>17 Q. Before he got out of the car.</p> <p>18 A. He took his seat belt off.</p> <p>19 Q. So he had to reach down to his side to do</p> <p>20 that; right?</p> <p>21 A. Uh-huh (positive response).</p> <p>22 Q. Onto his right side?</p> <p>23 A. Yeah.</p>	<p>1 on his knees and they just forced him on</p> <p>2 down.</p> <p>3 Q. You're saying they. Did both officers come</p> <p>4 over to the car?</p> <p>5 A. Yes.</p> <p>6 Q. Describe for me how that happened.</p> <p>7 A. How it happened?</p> <p>8 Q. Yes, sir.</p> <p>9 A. The passenger came from behind his door and</p> <p>10 then the driver came from behind his door.</p> <p>11 And when they got him on the ground, that's</p> <p>12 when the passenger's side -- I mean, the</p> <p>13 officer on the passenger's side came to my</p> <p>14 side.</p> <p>15 Q. Did Richard already start going towards the</p> <p>16 ground before they left out from behind</p> <p>17 their doors?</p> <p>18 A. He was getting on his knees.</p> <p>19 Q. Was he on his knees before they left their</p> <p>20 doors?</p> <p>21 A. Yes. He was getting on his knees when they</p> <p>22 told him to get down.</p> <p>23 Q. How long did it take them to get from where</p>

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Deposition of Kelvin Carmichael

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1 they started outside of their doors to
 2 Richard?
 3 A. Maybe two seconds, because they were right
 4 in front of us.
 5 Q. When they got to Richard, what did they do?
 6 A. The one on the driver's side pushed him on
 7 the ground.
 8 Q. How?
 9 A. Like from his back. He just pushed him on
 10 the ground.
 11 Q. One hand? Two hands?
 12 A. One, because he had a gun in his other
 13 hand.
 14 Q. Which hand did he use to push him on the
 15 ground with?
 16 A. I guess his left.
 17 Q. So the gun was in his right hand; is that
 18 right?
 19 A. If I'm not mistaken.
 20 Q. What was the other one doing?
 21 A. Like had his knees on the back of his neck
 22 once he got on the ground.
 23 Q. Before he got on the ground while the

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1 A. Uh-huh (positive response).
 2 Q. With his knee on Richard's back?
 3 A. Yeah. Because they was right in front of
 4 the door and he had his knee on his back
 5 and he was looking at me pointing the gun
 6 at me telling me not to move.
 7 Q. Once they got him cuffed, what did they do
 8 next?
 9 A. Snatched him up off the ground and started
 10 grabbing on his neck and stuff. And his
 11 pants and all that.
 12 Q. Did he just forget about you?
 13 A. No. The big one did once they got the
 14 handcuffs on him. The other one that was
 15 on the passenger's side walked on my side
 16 and told me to get out of the car.
 17 Q. How did he go? How did he get to your
 18 side?
 19 A. He walked around the front.
 20 Q. What did he do once he got to your side?
 21 A. Told me to get out the car.
 22 Q. Were you paying attention to him at that
 23 point in time?

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1 driver was pushing him down, what was the
 2 one that came from the passenger's side
 3 doing?
 4 A. Looking at me telling me don't move.
 5 Q. What was he doing with his weapon?
 6 A. Pointing it at me.
 7 Q. So Richard then goes to the ground?
 8 A. Uh-huh (positive response).
 9 Q. And after he gets to the ground what
 10 happens?
 11 A. That's when they put the handcuffs on him.
 12 Q. Who put the handcuffs on him?
 13 A. Chris West.
 14 Q. How did they cuff him? How did Chris cuff
 15 him? Excuse me.
 16 A. With his hands behind his back.
 17 Q. What did Chris do with his gun?
 18 A. He put it in his holster after he put the
 19 handcuffs on him. But the other one still
 20 had his out.
 21 Q. Where was that pointed?
 22 A. At me.
 23 Q. So he's still pointing at you?

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1 A. Which one?
 2 Q. The one who was around on your side of the
 3 car now.
 4 A. Yes.
 5 Q. And when he told you to get out of the car,
 6 what did you do?
 7 A. Get out.
 8 Q. How did you get out?
 9 A. Through the passenger's side.
 10 Q. Did you open the door? Did you go out the
 11 window? How did you get out?
 12 A. Open the door.
 13 Q. And he let you do that?
 14 A. Uh-huh (positive response).
 15 Q. Is that a yes?
 16 A. Yes.
 17 Q. Once you got out of the car, what happened
 18 next?
 19 A. They put the handcuffs on me.
 20 Q. Who put the handcuffs on you?
 21 A. The officer on the passenger side.
 22 Q. Explain for me the handcuffing process for
 23 you. How did he get cuffs on you?

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1 A. He just told me to stand on the side of the
2 car and he grabbed one of my arms and put
3 it behind my back and grabbed the other
4 one.
5 Q. Didn't put you on the ground?
6 A. Huh-uh (negative response).
7 Q. Is that a no?
8 A. No.
9 Q. Once he got the handcuffs on you, what
10 happened next?
11 A. He made me sit in the grass.
12 Q. Where we see you on Defendant's Exhibit 8?
13 A. Yes.
14 Q. Is that right?
15 A. Yes.
16 Q. So he took you over there?
17 A. Yes.
18 Q. Were you able to -- What, if anything, were
19 you able to see that was going on with
20 Richard while this was happening?
21 A. I just saw the bigger one that was driving
22 the car just had his hand around his neck
23 telling him to shut up and don't move and

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1 pulling all on his pants and stuff.
2 Q. Was Richard resisting him in any way?
3 A. No.
4 Q. Was he telling him he wasn't going to go
5 anywhere?
6 A. No. He just kept asking him why did they
7 pull him over and knock him off the road.
8 Just told him to shut up.
9 Q. Was your radio still on at this point?
10 A. No.
11 Q. What happened with Richard? What did they
12 do with him?
13 A. They put him -- I think they put him in
14 another car because I was in the Lincoln.
15 Q. That's a little bit further down the road,
16 though, right, in time?
17 A. What?
18 Q. Because they put you over here sitting on
19 the side of the hill initially; right?
20 A. Uh-huh (positive response).
21 Q. While you were sitting over here on the
22 hill, what did they do with Richard?
23 A. I think he was in the back seat of that car

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1 and another car pulled up. I know we
2 wasn't in the same car.
3 Q. Back seat of what car?
4 A. That Lincoln. I think that's what he was
5 in. Because after they sat me on the
6 ground it was like the car -- the Nova, it
7 was kind of like blocking because they had
8 him over there on the ground.
9 Q. When you say blocking, does that mean you
10 couldn't see what was going on?
11 A. After they sat me in the grass.
12 Q. Did you see anything else happen before --
13 Let me back up. Another police car came at
14 some point?
15 A. Yes. Because I remember he was in -- when
16 they stopped at the store, he was in
17 another car. He wasn't in the car with me.
18 Q. What happened between the time that you
19 were sat there on the hill and that other
20 police car came?
21 A. They was looking through his car.
22 Q. Who was looking through his car?
23 A. Chris West.

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1 Q. Just Chris?
2 A. And the other guy was, too, but he wasn't
3 looking in it like the other guy was.
4 Q. Did they take anything out of the car?
5 A. Their gun.
6 Q. What did they do with the gun?
7 A. I think they sat it on the hood of their
8 car.
9 Q. How soon after you guys came to a rest
10 after being knocked off the road did they
11 get the gun?
12 A. Probably after they sat me in the grass.
13 Probably about maybe two, three minutes
14 later, because time they looked in there
15 that's when they seen it.
16 Q. When did they first -- When did you first
17 know that they knew that there was a gun in
18 the car?
19 A. Because I heard one of the officers said
20 something about we pointing our guns at
21 them and he got a gun in here bigger than
22 ours.
23 Q. First of all, who made that comment?

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1 A. The guy that was on the passenger side.
 2 Q. And when did he make that comment?
 3 A. Once they looked in the car.
 4 Q. Was that before or after they cuffed
 5 Richard?
 6 A. After.
 7 Q. How long after they cuffed Richard?
 8 A. Probably about three, four minutes. It
 9 wasn't that long.
 10 Q. Did they take some pictures that day?
 11 A. They took a picture of me.
 12 (Defendant's Exhibit 13 was marked
 13 for identification.)
 14 Q. Let me show you Defendant's Exhibit 13. Is
 15 that the picture they took of you?
 16 A. Yes.
 17 Q. Did you see them taking these other
 18 pictures that we've been talking about
 19 today?
 20 A. Not really. I remember they took this
 21 picture right here. Not this one, but the
 22 one where I was sitting in the grass.
 23 Q. Defendant's 8?

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1 A. Uh-huh (positive response).
 2 Q. Is that a yes?
 3 A. Yes.
 4 Q. Well, everything that we've showed you so
 5 far, that is the way it was on that day;
 6 correct?
 7 A. Yes.
 8 Q. They took a picture of Richard too; right?
 9 A. Yes.
 10 Q. Let me show you Defendant's 11. Is that
 11 how he looked that day?
 12 A. Yes.
 13 Q. Let me show you Defendant's 9. What is
 14 that?
 15 A. Looks like about \$15.
 16 Q. Can you tell where that's at?
 17 A. Looks like under a bed.
 18 Q. That's not in Richard's car?
 19 A. No. He don't have carpet.
 20 Q. Let me show you Defendant's 4. Is that a
 21 picture of the inside of Richard's car that
 22 day?
 23 A. Yes.

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1 Q. Is that his ashtray?
 2 A. Yes.
 3 Q. And those bullets were in the ashtray that
 4 day?
 5 A. I guess. I didn't look in the ashtray.
 6 Q. But you do recognize that as his ashtray;
 7 correct?
 8 A. Yeah. That's the inside of his car.
 9 Q. At any point after Richard got out of the
 10 car but before he was placed in handcuffs
 11 did he try to get back in the car?
 12 A. No. Because as soon as he opened the door,
 13 they shot and he didn't ever move until
 14 they told him to get out.
 15 Q. Did he ever try to reach back into the car?
 16 A. No.
 17 Q. Other than the gun, did they take anything
 18 else out of the car during the search?
 19 A. No.
 20 Q. Did anybody search you?
 21 A. Yes.
 22 Q. Who searched you?
 23 A. Officer on the passenger side.

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1 Q. Did they take anything from you?
 2 A. No.
 3 Q. Did you see anybody search Richard?
 4 A. Yes.
 5 Q. Who searched Richard?
 6 A. Chris West.
 7 Q. Did you see them take anything from
 8 Richard?
 9 A. I seen them snatching all on his pants.
 10 That's when they made me sit down in the
 11 grass.
 12 Q. Did you see them take anything from him,
 13 though?
 14 A. No.
 15 Q. How long were you sitting there in the
 16 grass before that police car showed up?
 17 A. Maybe about 30, 45 minutes.
 18 Q. And you said they put you in what car?
 19 A. That Lincoln.
 20 Q. Did they put you in the car after that
 21 other police car showed up?
 22 A. After they put him in the car, yes.
 23 Q. After they put who in the car?

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- 1 A. Richard.
 2 Q. And they put him in which car?
 3 A. The police car.
 4 Q. Then they came and got you and put you in
 5 the Lincoln; is that right?
 6 A. Yes.
 7 Q. What happened after y'all got put in the
 8 cars?
 9 A. The other officer got in Richard's car.
 10 Q. Which other officer?
 11 A. The one that was on the passenger's side.
 12 Q. What happened then?
 13 A. We drove up the road about a little less
 14 than a mile. That's when Chris West pulled
 15 over on the side of the road and picked up
 16 something.
 17 Q. Did you see what it was he picked up?
 18 A. No. He put it in a bag.
 19 Q. Did you ever come to learn what it was that
 20 he picked up?
 21 A. No. I just know what he said when he got
 22 back in the car.
 23 Q. What did he say?

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- 1 A. We got your cousin's ass now.
 2 Q. Did he say anything else besides that?
 3 A. No.
 4 Q. Did you know what he meant by that?
 5 A. No.
 6 Q. How did he know at that point that you were
 7 cousins?
 8 A. Because they -- he asked me.
 9 Q. When did he ask you that?
 10 A. While I was sitting on the ground, they
 11 asked me how did I know him.
 12 Q. All right. Once Chris gets back in the
 13 car, what happens after that?
 14 A. They go on down the road to the store.
 15 Q. What store did they go to?
 16 A. Howard, Howard Hooks.
 17 Q. Where is that at?
 18 A. Probably about a mile from where we was at.
 19 Q. Towards Hayneville? Towards Wilcox County?
 20 A. Towards Hayneville.
 21 Q. And what happened when you got to the
 22 store?
 23 A. The police car pulled up and they pulled up

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- 1 in his car and was putting gas in it. And
 2 the police car had a flat and we had to sit
 3 there until they fixed the flat.
 4 Q. How long did that take?
 5 A. Probably about 30 minutes.
 6 Q. Anything else happen there at the gas
 7 station besides putting gas in Richard's
 8 car and fixing the flat?
 9 A. No. The other officer left in the car
 10 after that, after he put the gas in.
 11 Q. Left in Richard's car?
 12 A. Yeah.
 13 Q. Was the passenger still driving Richard's
 14 car?
 15 A. Yes.
 16 Q. He left before you did?
 17 A. Yes. After he put the gas in, he left and
 18 got out and was fixing his tire and Chris
 19 West stayed there until he got through.
 20 Q. After the tire was fixed, then what
 21 happened?
 22 A. They took us to the Hayneville jail.
 23 Q. How long did it take you to get to the

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- 1 Hayneville jail?
 2 A. Maybe five minutes. Five, 10 minutes.
 3 Q. Other than the comment that Chris made to
 4 you when he found whatever it was he found
 5 on the side of the road, did y'all have any
 6 other conversation at any time before you
 7 got to the jail?
 8 A. No. He had the radio up.
 9 Q. Did he talk on that CB radio as you
 10 described it while y'all were going to the
 11 jail?
 12 A. No.
 13 Q. How long does it take to get from that
 14 store to the jail?
 15 A. Maybe five, 10 minutes.
 16 Q. What happened once you got to the jail?
 17 A. They started dressing my cousin out. Well,
 18 made him change clothes.
 19 Q. What happened with you once you got to the
 20 jail?
 21 A. Nothing.
 22 Q. Nothing?
 23 A. No.

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1 Q. Okay. You arrive in the Lincoln. You're
2 still in handcuffs; right?
3 A. Yes.
4 Q. Car stops?
5 A. Yes.
6 Q. What happens after the car stops?
7 A. They just take me on the inside where they
8 book you at, where they put you in there
9 at.
10 Q. Were you booked?
11 A. No.
12 Q. What did they do with you?
13 A. He just took me in a room and started
14 asking me questions. Then he told me to
15 call me a ride because I ain't who they
16 want.
17 Q. How long were you in the booking area
18 before being taken to that room?
19 A. Maybe 30, 45 minutes.
20 Q. Were you able to see Richard get booked?
21 A. Yes.
22 Q. What happened with Richard's booking?
23 A. They took him in the back and made him

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1 change clothes back there with Chris West.
2 And when they came back to the front, they
3 put his stuff on the counter and they got
4 into it about that wasn't the money that he
5 had.
6 Q. Who is they that got into it?
7 A. He told Chris West that that wasn't the
8 money that he had in his pocket, that some
9 of it was missing.
10 Q. What did Chris say?
11 A. Told him to shut up and told the people to
12 put him in a -- like a little cell right
13 beside.
14 Q. Did they do that?
15 A. Yes.
16 Q. How many people besides you, Chris West,
17 and Richard were there in the booking area?
18 A. It was a lady at the desk and another guy.
19 Q. Was the deputy who transported Richard, was
20 he there?
21 A. Not that I remember.
22 Q. Who was the other guy?
23 A. Someone up behind the desk with the girl.

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1 Q. Was he wearing a uniform?
2 A. Yes.
3 Q. Was it a jail uniform?
4 A. It was like he worked there.
5 Q. What about the girl as you described her,
6 was she somebody who worked there too?
7 A. Yes.
8 Q. Do you know who she was?
9 A. No.
10 Q. Haven't seen them since?
11 A. No.
12 Q. Who took you back into that room that you
13 were telling me about?
14 A. Chris West.
15 Q. And how long were you back there with him?
16 A. Maybe 20 minutes.
17 Q. What did y'all talk about?
18 A. He just was asking me questions. Then
19 another guy came in.
20 Q. Who was the other guy?
21 A. I don't know. He had on like a suit.
22 Q. White guy or black guy?
23 A. Black guy.

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1 Q. Did he have a badge?
2 A. Yes.
3 Q. And a gun?
4 A. Yes.
5 Q. Did he ask you questions?
6 A. Yes.
7 Q. Did you make this statement that's
8 Defendant's Exhibit 6 while you were back
9 there in that room?
10 A. I think that's the paper. I know they had
11 me write something.
12 Q. I'll let you look at it again and you tell
13 me if that's what you did that day.
14 A. Yes.
15 Q. Anybody else besides Chris and the guy in
16 the suit come back there and talk to you?
17 A. No.
18 Q. And what happened after you made the
19 statement?
20 A. He told me he would call me a ride.
21 Q. And did you do that?
22 A. Yes.
23 Q. Who did you call?

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1 A. My aunt. But --
 2 Q. Which aunt?
 3 A. Shirley Marshall. But she wasn't there, so
 4 they told one of the police guys to take me
 5 home.
 6 Q. After you were taken back to that room
 7 where you made the statement, did you see
 8 Richard again that day?
 9 A. No.
 10 Q. Were there ever any charges pressed against
 11 you?
 12 A. No.
 13 Q. Other than you and Richard, do you know of
 14 anybody else who claims that they witnessed
 15 the chase?
 16 A. No.
 17 Q. Do you know of anybody who claims to have
 18 witnessed them ramming you off the road?
 19 A. No.
 20 Q. Do you know of anybody who claims to have
 21 gone by and saw y'all on the side of the
 22 road?
 23 A. I seen cars stopping, but I ain't know who

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1 they was.
 2 Q. You didn't recognize anybody?
 3 A. No.
 4 Q. Do you know what happened to that gun?
 5 A. No.
 6 MR. WILFORD: Let's take a break.
 7 (Brief recess was taken.)
 8 Q. Mr. Carmichael, what kind of stuff did you
 9 and your cousin Richard do before this
 10 incident?
 11 A. At his house?
 12 Q. Just in general. What kind of stuff did
 13 y'all do?
 14 A. Just sit around, watch TV, and used to go
 15 to the casino.
 16 Q. Which casino?
 17 A. In White Hall.
 18 Q. Anything else?
 19 A. Just around my cousin's house.
 20 Q. Do y'all still do those same things now?
 21 A. I'm back up in Montgomery.
 22 Q. You don't hang around with him anymore?
 23 A. I see him every now and then.

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1 Q. When you see him every now and then, do
 2 y'all do the same things you used to do?
 3 A. Like when he come up here, we'll probably
 4 go to the mall or something. But that's
 5 been probably a year ago.
 6 Q. That's just because y'all are separated by
 7 distance now; right?
 8 A. Yes.
 9 Q. Have you noticed any changes in his
 10 behavior?
 11 A. No.

MR. WILFORD: I think that's all I
 have.

MR. LEWIS: That's it.
 (Deposition was concluded at
 approximately 3:25 p.m.)

FURTHER DEPONENT SAITH NOT

Page 88

1 REPORTER'S CERTIFICATE
 2 STATE OF ALABAMA:
 3 MONTGOMERY COUNTY:
 4 I, Lyn Daugherty, Certified Shorthand
 5 Reporter and Commissioner for the State of Alabama
 6 at Large, do hereby certify that I reported the
 7 deposition of:
 8 KELVIN CARMICHAEL
 9 who was duly sworn by me to speak the truth, the
 10 whole truth and nothing but the truth, in the
 11 matter of:
 12 RICHARD MARSHALL,
 13 Plaintiff,
 14 vs.
 15 CHRIS WEST, in his individual
 16 capacity, LASHUN HUTSON, in his
 17 individual capacity,
 18 Defendants.
 19 IN THE UNITED STATES DISTRICT COURT
 20 FOR THE MIDDLE DISTRICT OF ALABAMA
 21 NORTHERN DIVISION
 22 Civil Action No. 2:06-cv-701-ID.CSC
 23 on Wednesday, November 14, 2007.

Deposition of Kelvin Carmichael

November 14, 2007

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1 The foregoing 87 computer-printed pages
2 contain a true and correct transcript of the
3 examination of said witness by counsel for the
4 parties set out herein. The reading and signing is
5 hereby waived.

6 I further certify that I am neither of kin
7 nor of counsel to the parties to said cause nor in
8 any manner interested in the results thereof.

9 This 13th day of December 2007.

10
11
12
13 Lyn Daugherty, ACCR #66
14 Expiration Date: 9-30-2008
15 Certified Court Reporter
16 And Commissioner for the
17 State of Alabama at Large
18
19
20
21
22
23

DEPOSITION OF CHRISTOPHER WEST

January 21, 2008

Pages 1 through 64

PREPARED BY:

Haislip, Ragan, Green, Starkie & Watson, P.C.

566 South Perry Street

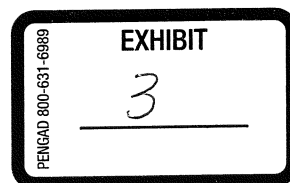
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Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RICHARD MARSHALL,
Plaintiff,

vs. CIVIL ACTION NO.
2:06-cv-701-ID.CSC

CHRIS WEST, in his individual
capacity, LASHUN HUTSON, in his
individual capacity,

Defendants.

DEPOSITION OF CHRISTOPHER WEST, taken
pursuant to stipulation and agreement before Tracye
Sadler Blackwell, Certified Court Reporter and
Commissioner for the State of Alabama at Large, in
the Law Offices of Webb & Eley, 7475 Halcyon Pointe
Drive, Montgomery, Alabama, on January 21, 2008,
commencing at approximately 9:10 a.m.

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APPEARANCES

ON BEHALF OF THE PLAINTIFF:

Mr. Jay Lewis
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847 South McDonough Street
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ON BEHALF OF THE DEFENDANTS:

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ALSO PRESENT:

Mr. Lashun Hutson

Page 3

EXAMINATION INDEX

BY MR. LEWIS 5

PLAINTIFF'S EXHIBITS

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6 6-28-05 Statement Form of Christopher West	55

STIPULATIONS

It is hereby stipulated and agreed by and
between counsel representing the parties that the
deposition of CHRISTOPHER WEST is taken pursuant to
the Federal Rules of Civil Procedure and that said
deposition may be taken before Tracye Sadler
Blackwell, Certified Court Reporter and
Commissioner for the State of Alabama at Large,
without the formality of a commission, that

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objections to questions other than objections as to
the form of the question need not be made at this
time but may be reserved for a ruling at such time
as the said deposition may be offered in evidence
or used for any other purpose by either party
provided for by the Statute.

It is further stipulated and agreed by and
between counsel representing the parties in this
case that the filing of said deposition is hereby
waived and may be introduced at the trial of this
case or used in any other manner by either party
hereto provided for by the Statute regardless of
the waiving of the filing of the same.

It is further stipulated and agreed by and
between the parties hereto and the witness that the
signature of the witness to this deposition is
hereby waived.

Deposition of Christopher West

Marshall vs. West; Hutson

January 21, 2008

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<p>1 THE COURT REPORTER: Usual</p> <p>2 stipulations?</p> <p>3 MR. MASTERS: Yes.</p> <p>4 MR. LEWIS: Yes.</p> <p>5</p> <p>6 CHRISTOPHER WEST</p> <p>7 The witness, after having first been duly sworn</p> <p>8 to speak the truth, the whole truth, and nothing</p> <p>9 but the truth, testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MR. LEWIS:</p> <p>12 Q. Tell us your name, please.</p> <p>13 A. Christopher Stewart West.</p> <p>14 Q. And how are you employed, Mr. West?</p> <p>15 A. By the Lowndes County Sheriff's Department.</p> <p>16 Q. And how long have you been employed by the</p> <p>17 Lowndes County Sheriff's Department?</p> <p>18 A. About 11, 12 years, I think.</p> <p>19 Q. And what's your position with Lowndes</p> <p>20 County Sheriff's Department?</p> <p>21 A. I'm a deputy sheriff.</p> <p>22 Q. Do you hold any particular rank as a deputy</p> <p>23 sheriff?</p>	<p>1 Community Affairs through a grant. There</p> <p>2 are several law enforcement agencies,</p> <p>3 including district attorney's office,</p> <p>4 within our three-county circuit.</p> <p>5 Each year an agency -- all the agencies</p> <p>6 are allowed to place an agent or an officer</p> <p>7 on the drug task force. Some agencies</p> <p>8 choose to participate. Most don't because</p> <p>9 of funding issues. Currently there's the</p> <p>10 Lowndes County Sheriff's Office, the</p> <p>11 Hayneville Police Department, and the</p> <p>12 district attorney's office that are</p> <p>13 participating on the drug task force as</p> <p>14 part of the grant.</p> <p>15 Q. Okay. So those three agencies make up the</p> <p>16 drug task force?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Are there federal agents assigned to that?</p> <p>19 A. No, sir.</p> <p>20 Q. But your salary continues to come from the</p> <p>21 Lowndes County Sheriff's Office?</p> <p>22 A. That's correct.</p> <p>23 Q. And the Lowndes County Sheriff's Office in</p>
Page 6	Page 8
<p>1 A. I'm a lieutenant.</p> <p>2 Q. How many people are employed in the Lowndes</p> <p>3 County Sheriff's Office? And by that I</p> <p>4 mean people who are in law enforcement as</p> <p>5 opposed to jail work.</p> <p>6 A. Between 10 and 12 deputies, I think.</p> <p>7 Q. And what is your particular job as</p> <p>8 lieutenant? Do you have any particular</p> <p>9 responsibility in that position?</p> <p>10 A. Yes, sir. I'm drug task force commander.</p> <p>11 Q. And help me understand the drug task force</p> <p>12 because there's always some confusion about</p> <p>13 whether it's a legal entity, whether it has</p> <p>14 its own personnel practices, whether it has</p> <p>15 its own policies. Tell me, if you will,</p> <p>16 what the 2nd Judicial Drug Task Force is.</p> <p>17 MR. MASTERS: Object to the form.</p> <p>18 Go ahead and answer as best as</p> <p>19 you can, Chris.</p> <p>20 A. The drug task force is a task force that's</p> <p>21 made up of several agencies. We're funded</p> <p>22 by the Department of Justice through the</p> <p>23 Alabama Department of Economic and</p>	<p>1 turn receives a grant to cover your</p> <p>2 activity with the drug task force?</p> <p>3 A. The Lowndes County Commission does, not the</p> <p>4 sheriff's office.</p> <p>5 Q. Does the Lowndes County -- does the drug</p> <p>6 task force have a separate policies and</p> <p>7 procedures manual for you to follow?</p> <p>8 A. Yes, sir, we do.</p> <p>9 Q. And are the policies and procedures in that</p> <p>10 promulgated by the Department of Justice or</p> <p>11 by some individual agency or the task force</p> <p>12 as a group?</p> <p>13 A. A board of directors that form up the drug</p> <p>14 task force. We have a board of directors</p> <p>15 that meet periodically, and if new rules or</p> <p>16 guidelines need to be established, then the</p> <p>17 board members will collectively make a</p> <p>18 decision on how to establish that.</p> <p>19 Q. Okay. And do those guidelines include</p> <p>20 tactical operations, the way you perform</p> <p>21 your duties, the day-to-day activities in</p> <p>22 which you're involved?</p> <p>23 A. Yes, sir.</p>

Deposition of Christopher West

Marshall vs. West; Hutson

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1 Q. Does the Lowndes County Sheriff's Office
2 have its own set of rules and regulations
3 for you to go by?
4 A. Yes.
5 Q. And who puts those out?
6 A. The sheriff.
7 Q. Have you discovered any conflicts between
8 the sheriff's guidelines and policies and
9 those of the drug task force?
10 A. No, sir.
11 Q. So they're pretty much consistent?
12 A. Yes, sir.
13 Q. Let me get a little personal information on
14 you. What's your address?
15 A. Physical or mailing?
16 Q. Physical.
17 A. 235 -- no. 214 Norman Drive, Fort Deposit.
18 Q. Okay. 214 Norman Drive?
19 A. Yes.
20 Q. And what's your educational background?
21 A. I graduated high school, currently in
22 college.
23 Q. And where are you in college?

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1 A. Herzing in Birmingham.
2 Q. Where?
3 A. Herzing. Herzing College in Birmingham.
4 Q. Herzing?
5 A. Yes, sir.
6 Q. What sort of school is that?
7 A. It's a private school.
8 Q. And you're looking for a four-year degree
9 from there?
10 A. Yes, sir.
11 Q. What year are you at Herzing?
12 A. My final year.
13 Q. And what's your major?
14 A. Homeland security and public safety.
15 Q. When did you graduate from high school?
16 A. In '86.
17 Q. Have you had any additional training since
18 1986 other than what you're getting at
19 Herzing College?
20 A. In regards to ...
21 Q. Your position, your job --
22 A. Yes, sir.
23 Q. -- criminal justice, that sort of thing.

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1 A. Yes, sir.
2 Q. Tell me about those.
3 A. It's just a --
4 Q. And I don't want the two-day seminars and
5 stuff like that.
6 A. Yeah. There's just numerous ...
7 Q. Okay. Have you been to the FBI Academy?
8 A. Yes, sir.
9 Q. How long a course was that?
10 A. Ten weeks.
11 MR. HOWARD: Can we take a second?
12 MR. LEWIS: Sure.
13 (A brief recess was taken.)
14 Q. (Mr. Lewis continuing:) Have you had any
15 other training courses that have been six
16 weeks or longer?
17 A. No, sir, I don't believe so.
18 Q. Have you been to any law enforcement
19 advanced driving academies?
20 A. No, sir.
21 Q. Let me call your attention to June 28th,
22 2005. And I'll represent to you that's the
23 date that everybody agrees that the

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1 incident with Mr. Marshall about which
2 we're here today occurred. What had you
3 been doing that entire day?
4 A. At my office. Got up out of bed that
5 morning and went to work.
6 Q. Okay. What projects were you working on
7 that day?
8 A. I don't remember.
9 Q. Okay. Do you remember when you left your
10 office?
11 A. No, sir, not exactly.
12 Q. Okay. At some point that day did you hook
13 up with Mr. Hutson?
14 A. Yes, sir.
15 Q. At what point did you do that?
16 A. I don't really remember. He may have -- we
17 may have been in the office together that
18 morning and discussed Mr. Marshall, or I
19 may have picked him up at another
20 location. I just don't remember.
21 Q. When you say you might have picked him up,
22 do you recall who was driving?
23 A. I was driving.

Deposition of Christopher West

Marshall vs. West; Hutson

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1 Q. Do you recall what you were driving?
 2 A. Yes, sir.
 3 Q. What were you driving?
 4 A. A Lincoln.
 5 Q. What model?
 6 A. Town Car.
 7 Q. What year? Do you remember?
 8 A. No, sir, I don't remember.
 9 Q. And why were you driving a Lincoln Town
 10 Car?
 11 A. I don't remember exactly why we were
 12 driving the Lincoln that day.
 13 Q. Was that Lincoln a vehicle that had been
 14 confiscated?
 15 A. Yes, sir.
 16 Q. And had there been a condemnation
 17 proceeding as to that Lincoln?
 18 A. Yes, sir.
 19 Q. And it had been condemned and your office
 20 had it?
 21 A. Yes, sir.
 22 Q. Why were you discussing Mr. Marshall that
 23 day?

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1 A. I had received information that
 2 Mr. Marshall was selling dope at his
 3 residence, selling illegal drugs at his
 4 residence.
 5 Q. Where did you get that information?
 6 A. I don't remember.
 7 Q. Did you make any notes of where you got
 8 that information from?
 9 A. I may have.
 10 Q. Would you have preserved those notes?
 11 A. No, sir.
 12 Q. Did your information indicate what sort of
 13 drugs he was supposed to be selling?
 14 A. Crack cocaine and marijuana.
 15 Q. And based on that information what, if
 16 anything, did you do?
 17 A. We drove out to Mr. Marshall's residence to
 18 do a knock-and-talk and to just discuss
 19 with him the information that we had
 20 received.
 21 Q. And where was Mr. Marshall's residence?
 22 A. Just off Highway 21 on a little dirt road.
 23 I don't recall the name of the dirt road.

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1 And it wasn't -- I don't know if you really
 2 could consider it a dirt road. It's more
 3 like a -- more like a big driveway that
 4 kind of went up a hill and then it took a
 5 right right in front of the mobile home
 6 where he was living at at the time. And as
 7 it went on past his house, I guess maybe
 8 less than a hundred yards or so it kind of
 9 turned into a little more narrow trail so
 10 to speak. So I don't even know if it's
 11 considered -- if it has a name. It could
 12 be a private drive.
 13 Q. All right. Did you know Mr. Marshall prior
 14 to this time?
 15 A. No, sir.
 16 Q. Had you had any law enforcement contact
 17 with Mr. Marshall prior to this time?
 18 A. Never met him. Never seen him before.
 19 Q. Had you received any prior information
 20 about Mr. Marshall prior to that time?
 21 A. Yes, sir.
 22 Q. And what information had you received?
 23 A. The same information in reference to drug

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1 activity.
 2 Q. When you got to his house, what, if
 3 anything, did you do?
 4 A. I believe that we knocked on the door and
 5 no one came to the door. We got back in
 6 our vehicles and -- or got back in our
 7 vehicle and left the residence. Agent
 8 Hutson had some information about another
 9 place that was, I think -- I think it's
 10 referred to as the Casey community. It's
 11 kind of in that area. It's not in the
 12 exact same area, but it's in that part of
 13 the county. And when we were leaving
 14 Mr. Marshall's residence, we were going to
 15 go to this home down in the Casey
 16 community.
 17 Q. And what information did you have about the
 18 Casey community that led you to go down
 19 there?
 20 A. Agent Hutson had that. I'm not exactly --
 21 I'm not exactly sure.
 22 Q. So you were looking for Mr. Marshall?
 23 A. Yes, sir.

Deposition of Christopher West

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Page 17

1 Q. Did you know what kind of car Mr. Marshall
2 was likely to be driving?
3 A. Yes, sir.
4 Q. And what were you on the lookout for?
5 A. A blue Chevy Nova, older -- older -- older
6 type vehicle.
7 Q. And just so I'm clear, you did not -- you
8 do not recall today how you received the
9 information about Mr. Marshall allegedly
10 selling drugs?
11 A. No, sir. It could have been someone we
12 interviewed and I just made a note on
13 some -- a small Post-it, or it could have
14 been a phone call. I know we received it
15 on more than one occasion.
16 Q. And when you received that information, do
17 you have a present sense of whether or not
18 you believed that information to be
19 reliable?
20 A. If -- if it was a source that was a
21 reliable source and the time frame allowed,
22 I would have obtained a search warrant for
23 his residence. But we're doing a

Page 18

1 knock-and-talk, so maybe -- it could have
2 been a reliable informant that just knew
3 that activity was going on and just
4 referred it to me and we went out to do the
5 knock-and-talk. If it was reliable, we
6 would obtain -- I mean, if it was reliable
7 and within the time frame allowed, we would
8 have gotten a search warrant.
9 Q. Okay. So the fact that you didn't get a
10 search warrant would seem to indicate that
11 it was not the sort of information that you
12 would have taken to a judge at that time;
13 correct?
14 A. That's correct. Not at that time.
15 Q. All right. So you're on your way to the
16 Casey community. How do you get to the
17 Casey community from where Mr. Marshall's
18 residence is?
19 A. You know, I'm not exactly sure because I
20 don't think I've ever been there before.
21 But, now, Agent Hutson is familiar with it.
22 Q. Okay.
23 A. But I know it's -- you got to -- in the

Page 19

1 direction we were coming from, you have to
2 go down County Road 7. Because we were on
3 21. I mean, he -- where he lives is just
4 off 21.
5 Q. Right.
6 A. So if you're coming back toward Hayneville
7 from Mr. Marshall's residence, you take a
8 left on County Road 7.
9 Q. And prior to your encountering Mr. Marshall
10 had you taken that left?
11 A. Yes, sir.
12 Q. So you were on County Road 7 at that time?
13 A. That's right.
14 Q. What, if anything, happened then?
15 A. We met Mr. Marshall's vehicle, and I -- I
16 said, well, that's his vehicle right
17 there. We turned around and got behind his
18 vehicle.
19 Q. Okay. And what then?
20 A. Mr. Marshall didn't have on a seatbelt. I
21 observed that he didn't have on a
22 seatbelt. And we've got a blue-and-white
23 warning light that is powered -- it's a

Page 20

1 12-volt power that you plug into the
2 cigarette lighter. And I placed it on the
3 dash of the vehicle and activated that
4 light behind his vehicle.
5 Q. What did Mr. Marshall do in response to
6 that?
7 A. Kept driving.
8 Q. How fast were you going at the time you
9 first activated this light?
10 A. I don't -- I don't recall.
11 Q. Well, would you consider it an excessive
12 rate of -- without regard to miles per
13 hour, an excessive rate of speed, an
14 ordinary rate of speed, a slow rate of
15 speed?
16 A. An ordinary rate. It wasn't exceeding the
17 speed limit.
18 Q. And your position is that Mr. Marshall --
19 that you activated this light?
20 A. That's correct.
21 Q. And the light was working at the time?
22 A. Yes, sir.
23 Q. And there were blue-and-white strobes or

Deposition of Christopher West

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1 flashes coming off the light?
 2 A. That's correct.
 3 Q. All right. So Mr. Marshall kept on
 4 driving?
 5 A. That's right.
 6 Q. What did you do then?
 7 A. Blew the horn, flashed the headlights, and
 8 even at one point pulled alongside his
 9 vehicle.
 10 Q. What color was this Lincoln Town Car you
 11 were in?
 12 A. It's kind of a bluish/aquamarine type
 13 color.
 14 Q. Doesn't look much like a police car though?
 15 A. No.
 16 Q. So you blew the horn, and Mr. Marshall just
 17 continued to keep driving; right?
 18 A. Yes, sir.
 19 Q. You say you pulled up alongside him. Tell
 20 me about that.
 21 A. We pulled alongside the vehicle. And, like
 22 I said, it -- he's got an older car. It
 23 doesn't run that fast. Pulled alongside

Page 22

1 the vehicle. Our windows are down. I
 2 think Agent Hutson holds up his badge. And
 3 it's a pretty good -- it's a pretty good
 4 size badge. It's round and it has a
 5 leather cover around it. It's a gold badge
 6 with a black background. And he holds it
 7 up. I mean, we're probably as close from
 8 me to you. And he holds up the badge and
 9 says pull over. And Mr. Marshall is
 10 yelling and cussing, and he's very -- has a
 11 very defensive appearance about himself.
 12 And so Agent Hutson is holding up the
 13 badge. And then at one point we even
 14 removed the light from the dash and we've
 15 got the badge in one hand and the light in
 16 the other saying pull over. And he's
 17 looking, I mean, directly at us. And he
 18 says, you know, fuck y'all or something to
 19 that nature, you know, I'm not pulling
 20 over, you know. And so he keeps on going.
 21 And so we pull -- you know, we back off and
 22 pull back in behind the vehicle just
 23 following behind him.

Page 23

1 Q. At some point you're -- setting the scene
 2 here, you have turned onto Highway 7. You
 3 meet him. He's coming toward you?
 4 A. That's correct.
 5 Q. You turn around and you're going back,
 6 what, south on Highway 7 approximately?
 7 A. Yeah.
 8 Q. Back toward Highway 21?
 9 A. That's correct.
 10 Q. And when I say Highway 7, I mean County
 11 Road 7.
 12 A. That's right.
 13 Q. Heading back toward Highway 21?
 14 A. Uh-huh (positive response).
 15 Q. What, if anything, happened when you hit
 16 Highway 21?
 17 A. He speeds up a little bit. It's a little
 18 wider highway than the county road.
 19 Q. Did he turn onto Highway 21?
 20 A. Yes, he did.
 21 Q. Which direction did he turn?
 22 A. Going toward his residence, away from
 23 Hayneville toward Wilcox County.

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1 And less than maybe 50 to 75 yards he
 2 throws something out the window that
 3 actually hits us in the windshield, a
 4 plastic baggy. I seen enough of those in
 5 my years. I know what a plastic baggy
 6 looks like. It hits us and just kind of
 7 flies off to the side. So I'm making
 8 mental notes to try to remember where this
 9 evidence or whatever came out of the
 10 window.
 11 And he continues to go in the direction
 12 of Wilcox County. So we pull up beside him
 13 again, you know, hey, pull over. We got
 14 the badge just like this right here and the
 15 light, you know, pull over. And he's just
 16 yelling and cussing, you know, fuck you
 17 all, I'm not doing it, I'm not pulling
 18 over, you know.
 19 And so we back off. And I tell Shun, I
 20 says, hold on. Because he's moving around
 21 in his seat. There's -- you know, he's
 22 like looking down. He's -- there's a lot
 23 of movement going on in the seat with him.

Deposition of Christopher West

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1 And I tell Shun, I says, you know, you hold
 2 on because something is going on here.
 3 And so I bump his vehicle a couple of
 4 times thinking that that will, you know,
 5 make him pull over, but he still -- you
 6 know, he's yelling and he's -- and he sees
 7 us. I mean, he's looking in the mirror.
 8 He sees us back -- he sees the blue light.
 9 And so he ducked, and then I just kind
 10 of, you know, pushed his bumper a little
 11 bit. And his vehicle swerves and comes up
 12 on this side of the road. Never harm
 13 anything. I don't even think it hurt the
 14 grass. And he came to rest in the
 15 vehicle. The vehicle came to rest up on
 16 the embankment. And I believe I backed up
 17 because I took a position -- a defensive
 18 position -- his vehicle -- if my wrist is
 19 the front of his vehicle, then the nose of
 20 my vehicle took a position like -- at an
 21 angle like this.
 22 And we opened our doors with our
 23 weapons drawn behind our -- behind the

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1 doors. And I said to him -- I said, get
 2 out of your vehicle and get on the ground.
 3 And he just sat there cussing and just
 4 sweating, and his eyes were red. It was a
 5 bad situation.
 6 Q. Let's go back just a little bit. Earlier
 7 you had said that when you pulled up next
 8 to him you were as close as you were to
 9 me --
 10 A. Yeah.
 11 Q. -- right now. And I estimate that distance
 12 to be about four to five feet. Would that
 13 be accurate?
 14 A. Or maybe further. Something like that. I
 15 mean, I could see his face and I'm
 16 driving. And Shun is even closer than I
 17 am. But I'm driving. There's nothing else
 18 on the road. And I'm looking him in his
 19 face and he's looking at us. And he sees
 20 the light and the badge is just like this.
 21 And, like I say, it's a gold badge with a
 22 black background and a blue-and-white
 23 strobe just flashing.

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1 Q. I understand --
 2 MR. MASTERS: Object to the form
 3 of the previous question.
 4 Just listen to his questions
 5 and answer his questions.
 6 THE WITNESS: Okay. I'm sorry.
 7 Q. The question -- the cars would have been
 8 approximately four to five feet apart?
 9 A. Yes, sir.
 10 Q. And when you say you pulled alongside him,
 11 I'm assuming that you mean that your car's
 12 passenger's side was next to his car's
 13 driver's side?
 14 A. Yes, sir.
 15 Q. And to clarify what you said about how you
 16 stopped --
 17 MR. MASTERS: Excuse me. Object
 18 to the form of the previous
 19 question.
 20 Did you hear the
 21 question, Chris? Which side
 22 was closest to which?
 23 THE WITNESS: Shun's side was

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1 closest to his driver's side.
 2 MR. MASTERS: So your car's
 3 passenger's side was close to
 4 his car's driver's side?
 5 THE WITNESS: That's right.
 6 MR. MASTERS: I think you said the
 7 opposite, Jay. I may be
 8 mistaken.
 9 MR. LEWIS: Well, I'll -- we'll go
 10 with the fact that his car --
 11 that Mr. West's car's
 12 passenger's side was next to
 13 Mr. Marshall's driver's side.
 14 MR. MASTERS: I may be mistaken,
 15 but I thought you said the
 16 opposite.
 17 MR. LEWIS: That's fine.
 18 Q. But to clarify, you didn't pull over to the
 19 right to get up next to his car. You
 20 pulled to the left?
 21 A. Yeah. I pulled as if I was passing his
 22 car.
 23 Q. Right. Okay. And this is a two-lane

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1 highway?
 2 A. Yes, sir.
 3 Q. Are you familiar with what a PIT is?
 4 A. Yes, sir.
 5 Q. What is a PIT?
 6 A. It's a -- what's referred to as PIT
 7 maneuver.
 8 Q. And that's a precision intervention
 9 technique or precision interdiction
 10 technique?
 11 A. Yes, sir.
 12 Q. And is that what you performed on
 13 Mr. Marshall's car?
 14 A. Yes, sir.
 15 Q. And to clarify -- correct me if I'm
 16 wrong -- that's a procedure by which you
 17 pull up next to the car with your front
 18 fender next to his rear fender and then
 19 slow down and simultaneously turn into his
 20 car bumping it into a turn; correct?
 21 A. Something of that nature.
 22 Q. And that's pretty much what you did on that
 23 occasion?

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1 A. Yes, sir.
 2 Q. And his car came to rest off the road;
 3 correct?
 4 A. Yes, sir.
 5 Q. Based on what you said.
 6 And did it come to rest facing back in
 7 the direction from what you had come?
 8 A. Yes, sir.
 9 Q. So instead of going toward Wilcox County,
 10 it is now headed away from Wilcox County in
 11 the grass?
 12 A. That's correct.
 13 Q. On the opposite side of the road?
 14 A. Yes, sir.
 15 Q. You then backed up and angled your car
 16 toward his car just off the road?
 17 A. That's correct.
 18 Q. Okay. I think we've got the scene set.
 19 And you indicated that you jumped out
 20 of the car and Mr. Hutson jumped out of the
 21 car, weapons drawn, and yelled at
 22 Mr. Marshall to get out of the car?
 23 A. That's correct.

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1 Q. And what, if anything, was Mr. Marshall
 2 saying to you at the time?
 3 A. Cursing.
 4 Q. Okay. Have any recollection of the
 5 specific language he was using?
 6 A. Fuck y'all, why y'all fucking with me,
 7 things of that nature.
 8 Q. Going back to when you say he threw a baggy
 9 out of the car and hit your car. In what
 10 way did he -- I mean, tell me what you saw
 11 as that baggy came out of the car.
 12 A. I saw his arm go up and the bag come out.
 13 Like I said, we could see him moving around
 14 in the car.
 15 Q. And you made note of where that baggy had
 16 gone off the road?
 17 A. Yes, sir.
 18 Q. You've got him in the car. Did he have a
 19 passenger with him?
 20 A. Yes, sir.
 21 Q. And what did the passenger do, if
 22 anything?
 23 A. Nothing really.

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1 Q. Just sat there?
 2 A. Yes, sir.
 3 Q. Did you hear the passenger cursing?
 4 A. No, sir.
 5 Q. And Mr. Marshall's window, was it up or
 6 down?
 7 A. Down.
 8 Q. What's the next thing that happened?
 9 I know I sound like a prosecutor, but
 10 what happened then?
 11 A. Mr. Marshall -- he got out of his car. He
 12 was standing -- he had the door open and
 13 was standing between the car and the door.
 14 And he's yelling and cussing. And I tell
 15 him several times to get on the ground. He
 16 will not comply. And several more times I
 17 say get on the ground, get on the ground
 18 now. He won't comply. And I fired my
 19 weapon in the ground, I guess, some
 20 seven -- six to eight feet out from him
 21 into the ground.
 22 At that point he was shocked that that
 23 even happened. I could see the appearance

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1 on his face. That's when I left from
2 behind my door, my weapon still pointed at
3 him -- or my weapon pointed at him, and as
4 I approached him, I grabbed him. I don't
5 remember where I grabbed him, but I know I
6 grabbed him and I put him on the ground.
7 And he -- he was very resistant.

8 But he was cussing and just combative.
9 Not very combative, but just not wanting to
10 comply at all. But I was able to get my
11 handcuffs out and put the handcuffs on
12 him. And I think Agent Hutson got the
13 passenger out and placed the handcuffs on
14 him.

15 I left him there on the ground after I
16 got him handcuffed and looked into the
17 vehicle. On the driver's seat right there
18 in the middle was a .357 Magnum. And in
19 the ashtray was .357 rounds. There was
20 some rounds in the floorboard and might
21 have been some loose rounds in the seat.
22 But I know the gun was loaded. And there
23 was a -- like a liquor flask there in the

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1 seat and, I think, a pack of Swisher Sweet
2 cigars, a partial pack or something.

3 I get him -- after I see this stuff
4 right here, I'm -- I pat him down. And I
5 think -- when I -- when I'm trying to get
6 him -- when I get him to the ground, he's
7 got these big -- real big shorts on that
8 are the bagging shorts. So they basically
9 come off of him. He doesn't have on a belt
10 or anything. And so cars are coming by and
11 he's there in his underwear. So I'm trying
12 to get him to get into the back seat of the
13 car, basically trying to save him from some
14 humiliation because he's standing there in
15 his boxers, so -- but he won't comply. He
16 just won't do nothing I'm asking him. So
17 eventually I get him pushed into the back
18 seat because, like I say, traffic is coming
19 by.

20 And the other guy, I think Agent Hutson
21 sits him over on the embankment. He's
22 cool. He's not saying anything. He's not
23 resisting in any manner. I call a marked

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1 unit. The marked unit comes out and
2 transports them. I take some photos. And
3 that's pretty much the gist of it.

4 Q. Going back to when you had him on the
5 ground and were doing the search of the
6 vehicle. Did you also do a search of him,
7 did you say?

8 A. I patted him, patted his pockets to see if
9 he had any weapons or anything in his
10 pockets.

11 Q. Did you remove a wallet?

12 A. I may have. I don't remember.

13 Q. Did you remove any money from him?

14 A. I may have.

15 Q. If you removed any money from him, did you
16 turn in all of the money you removed from
17 him?

18 A. Yes, sir.

19 Q. Turned it in to whom?

20 A. The jail.

21 Q. Okay. Anything else you turned in to the
22 jail other than possibly money?

23 A. No, sir.

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1 Q. Okay.

2 A. If he didn't have any weapons --

3 MR. MASTERS: Chris, just answer
4 his question.

5 THE WITNESS: Okay.

6 Q. Well, what would have been your normal
7 procedure for dealing with confiscated
8 property?

9 A. If he didn't have any weapons, normally I
10 would leave it in his pockets because the
11 jail is going to pick that stuff up when he
12 gets there anyway.

13 Q. Do you recall whether you did that in this
14 case or not?

15 A. No, sir.

16 Q. What did you do then after he was trans --
17 let me go back.

18 You said that you called for a marked
19 unit?

20 A. Yes, sir.

21 Q. And did a marked unit arrive?

22 A. Yes, sir.

23 Q. From what jurisdiction was that marked

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1 unit?
 2 A. Lowndes County.
 3 Q. And do you recall who was in that marked
 4 unit?
 5 A. Yes, sir.
 6 Q. Who was that?
 7 A. Deputy Phil Harding.
 8 Q. And what did Deputy Phil Harding do when he
 9 got on the scene?
 10 A. Took Mr. Marshall and put him in the back
 11 seat of his vehicle.
 12 Q. By that time had Mr. Marshall calmed down?
 13 A. No, sir.
 14 Q. Still combative?
 15 A. No, sir, not combative. Just still ...
 16 Q. Hostile?
 17 A. Yes, sir.
 18 Q. But you didn't have to -- nobody had to
 19 fight him to get him in the patrol car?
 20 A. I don't recall, no, sir.
 21 Q. And did the patrol car then leave with
 22 Mr. Marshall?
 23 A. Yes, sir.

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1 Q. What happened to the passenger?
 2 A. He rode with me.
 3 Q. And did you have any trouble out of him at
 4 all?
 5 A. No, sir.
 6 Q. Do you recall who he was?
 7 A. What's that boy's last name?
 8 I know, but I can't remember right now.
 9 Q. Had you had any contact with him before?
 10 A. No, sir.
 11 Q. Didn't know him?
 12 A. No, sir.
 13 Q. When's the next time you saw Mr. Marshall?
 14 A. I went to interview him a few days later.
 15 Q. At that time had he been charged with
 16 anything?
 17 A. Yes, sir.
 18 Q. And do you recall how long he was held
 19 before he was charged?
 20 A. He was charged the day that I arrested him.
 21 Q. And you signed a warrant on him?
 22 A. Yes, sir.
 23 Q. Do you recall whether it was you or

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1 Mr. Hutson who did the paperwork and the
 2 deposition and got the charge --
 3 A. I think it was me. I think.
 4 Q. And the only reason I ask that is I
 5 couldn't read the signatures.
 6 A. Okay.
 7 Q. And tell me about the interview you had
 8 with Mr. Marshall.
 9 A. He was calm. We talked just like you and I
 10 are talking now. And I asked him for a
 11 statement, and he says, I -- he didn't want
 12 to give me a statement. And so I told him
 13 I understood, and that was the end of it.
 14 Q. Any sense of how long that interview took?
 15 A. 20, 30 minutes, something like that.
 16 Q. Going back to the time that Mr. Marshall
 17 was transported in the deputy's patrol
 18 car. What did you do after that, after
 19 Mr. Marshall had been taken away?
 20 A. We -- we actually all left together. I
 21 think Agent Hutson drove Mr. Marshall's car
 22 because it was still fine. And I drove the
 23 Lincoln. Phil Harding came on the marked

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1 unit. He had Mr. Marshall. His --
 2 Mr. Marshall's cousin was with me. And
 3 Shun drove the Nova.
 4 I think we may have stopped alongside
 5 the road looking for the evidence or the
 6 bag that was thrown out. And I think Phil
 7 pulled over too. And I think when he
 8 pulled over he caught a nail in his tire,
 9 and so he had -- he sprung a leak in his
 10 tire. So we were maybe a mile -- less than
 11 a mile from Howard Hooks' store. So Phil
 12 drove his car up to Howard Hooks' store. I
 13 went up with him while he changed the tire,
 14 and Shun took the Nova on back to the jail.
 15 Q. When you pulled over to the side of the
 16 road, did you retrieve anything?
 17 A. I don't remember whether we did at that
 18 time or not. I think we went back and
 19 later retrieved it. I don't remember.
 20 Maybe we did. I don't remember exactly.
 21 Q. What did you retrieve?
 22 A. A baggy containing residue.
 23 Q. And what did you do with that baggy?

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1 A. I sent it to forensics.
 2 Q. Tell me about how you, quote, sent it to
 3 forensics.
 4 A. I bagged it up in a brown paper bag because
 5 we were seeking a fingerprint analysis. I
 6 labeled it to get -- for fingerprint
 7 analysis. The fingerprint analysts weren't
 8 able to recover any fingerprints off of
 9 it. Once I received it from fingerprint
 10 analysis, I sent it to forensics, to drug
 11 analysis, and they weren't able to
 12 determine because there was just not enough
 13 residue in the bag.
 14 So I got both of those back, and they
 15 were just both -- both of the results. And
 16 there was --
 17 Q. There was sufficient residue for you to see
 18 that there was residue?
 19 A. Yes, sir.
 20 Q. And yet it was not sufficient for forensics
 21 to make a determination?
 22 A. That's correct.
 23 Q. And you received a report back from

1 Q. And the following page?
 2 A. It's the evidence submission form for
 3 latent prints.
 4 Q. And the following page?
 5 A. It's the -- it's just a copy of the same
 6 form.
 7 Q. And down at the bottom it would indicate --
 8 it would seem to indicate that the chain of
 9 custody as to the page we're on was not as
 10 complete as the previous page?
 11 A. Say what, now?
 12 Q. The previous page of the fingerprint
 13 examination request seems to show a full
 14 chain of custody down at the bottom. In
 15 other words, it shows it was received by,
 16 returned to, and then returned by.
 17 A. Oh, okay.
 18 Q. And there's three signatures. And the next
 19 page seems to just be the original
 20 submission.
 21 A. You mean the final page?
 22 Q. No, no.
 23 A. Oh, okay.

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1 forensics?
 2 A. Yes, sir.
 3 Q. Let me show you what we will mark as
 4 Plaintiff's Exhibit Number 1.
 5 (Plaintiff's Exhibit 1 was marked
 6 for identification.)
 7 Q. I'm showing you what we've marked as
 8 Plaintiff's Exhibit Number 1 and ask you if
 9 you recognize that.
 10 A. Yes, sir.
 11 Q. And what is that, please?
 12 A. It's an evidence submission form.
 13 Q. And that's page 1?
 14 A. That's the submission form.
 15 Q. Okay. Let's go to page 2. What is that?
 16 A. That's the receipt of submission from
 17 forensic sciences.
 18 Q. And that's done in order to preserve what
 19 we call the chain of custody?
 20 A. Yes, sir.
 21 Q. What is the next page?
 22 A. This is the certificate of analysis from
 23 forensic sciences.

1 Q. Okay.
 2 A. So are you saying that this guy, Shannon
 3 Fitzgerald, received it from me and then on
 4 this page right here is the one where the
 5 actual examination took place?
 6 Q. Right.
 7 A. Okay.
 8 Q. Is that pretty much the way it looks to
 9 you?
 10 A. That's the way it appears.
 11 Q. Okay. And then let's go to the last page.
 12 What is that?
 13 A. This is the -- I guess the findings from
 14 the examination.
 15 Q. All right. Let's go back to this third,
 16 fourth -- yeah, the third page, the
 17 certificate of analysis.
 18 A. Yeah.
 19 Q. What was the result of that analysis as far
 20 as you can tell?
 21 A. That the analysis of the residue failed to
 22 reveal the presence of any controlled
 23 substances.

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1 Q. So they were able to perform an analysis?
 2 A. Yes, sir.
 3 Q. But simply couldn't find any controlled
 4 substance?
 5 A. Couldn't find any controlled substance.
 6 Q. And the last page, which is the report of
 7 the fingerprint analysis, what was the
 8 finding there?
 9 A. No latent prints of value were found on the
 10 evidence.
 11 Q. Okay. But Mr. Marshall was in fact charged
 12 with possession of controlled substance?
 13 A. That's correct.
 14 Q. Was he charged with anything else?
 15 A. I don't remember. Pistol without a permit,
 16 I think.
 17 Q. Had you seen that pistol in Mr. Marshall's
 18 possession prior to the time you executed
 19 the PIT maneuver?
 20 A. No, sir.
 21 (Plaintiff's Exhibit 2 was marked
 22 for identification.)
 23 Q. Let me show you what's marked as

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1 Plaintiff's Exhibit Number 2 and see if you
 2 recognize that. What is that, please?
 3 A. It's a warning citation.
 4 Q. And it was for attempting to elude and no
 5 seatbelt; correct?
 6 A. That's correct.
 7 Q. With regard to that seatbelt violation, do
 8 you have any idea whether 1971 Chevrolets
 9 were even equipped with shoulder harnesses?
 10 A. No, sir.
 11 Q. Okay. So it may well be that shoulder
 12 harnesses were not even available as far as
 13 you know in 1971?
 14 A. As far as I know.
 15 MR. MASTERS: Object to the form.
 16 A. That's correct.
 17 Q. And if he had had a seatbelt and not a
 18 shoulder harness, would you have been able
 19 to see that from your perspective while
 20 following him?
 21 A. No, sir.
 22 (Plaintiff's Exhibit 3 was marked
 23 for identification.)

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1 Q. Let me show you what I've marked as
 2 Plaintiff's Exhibit Number 3 and see if you
 3 recognize that.
 4 A. Yes, sir.
 5 Q. What is that?
 6 A. It's a deposition.
 7 Q. And what is a deposition used for in this
 8 context?
 9 A. Probable cause for the clerk to issue a
 10 warrant.
 11 Q. And this is the deposition relating to
 12 possession of controlled substance and
 13 pistol without a permit; correct?
 14 A. Yes, sir.
 15 Q. Who filled out this form?
 16 A. I did.
 17 Q. Okay. Looking on the second page up at the
 18 top where it says complainant, whose
 19 signature is that?
 20 A. That's my signature.
 21 Q. And it says offender attempted to elude DTF
 22 agents at the same time throwing drug
 23 evidence out the window.

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1 Going back to what you had said a
 2 little earlier. You had said when
 3 Mr. Marshall turned onto Highway 21 toward
 4 Wilcox County --
 5 A. Yes, sir.
 6 Q. -- he sped up a little --
 7 A. Yes, sir.
 8 Q. -- but that his car really was not capable
 9 of going very fast?
 10 A. No, sir.
 11 Q. How fast, if you have a judgment, was
 12 Mr. Marshall going at the time that you
 13 executed the PIT maneuver?
 14 A. I'm not sure.
 15 Q. But you weren't exceeding the speed limit?
 16 A. I don't remember.
 17 Q. But you don't have a sense that you were --
 18 as of today -- and since you don't
 19 remember, I'm just trying to clarify this.
 20 Do you have a sense today that you were in
 21 a high speed chase?
 22 A. I would say so, yes, sir.
 23 Q. Okay. So how high do you think the speed

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1 was?
 2 A. I just -- I don't remember.
 3 Q. So it said attempted to elude DTF agents at
 4 the same time. Isn't it true what you
 5 meant by that was he simply failed to stop?
 6 MR. MASTERS: Object to the form.
 7 A. I don't know. I mean, I guess that depends
 8 on how you look at it.
 9 Q. I guess it does. But he didn't attempt to
 10 turn on to any other roads and lead you on
 11 this path through the woods or anything
 12 like that?
 13 A. No, sir.
 14 Q. Okay. He simply turned back toward what
 15 you knew to be his residence?
 16 A. Yes, sir.
 17 MR. MASTERS: Object to the form.
 18 Q. And it says throwing drug evidence out of
 19 the window. But at this point you don't
 20 have any evidence whatsoever that he
 21 actually threw drug evidence out?
 22 A. No, sir.
 23 Q. Offender was forced from the roadway onto

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1 the opposite side of the roadway where his
 2 vehicle came to rest. Offender was not
 3 wearing seatbelt and was highly
 4 belligerent, cursing, very combative, and
 5 obviously highly agitated. Have you told
 6 me everything about that that you can
 7 recall when you described it earlier?
 8 A. His demeanor?
 9 Q. Yeah.
 10 A. Yeah, I guess. I mean, if I could think of
 11 a few more words to use, I'd use them.
 12 Q. Okay. There also was a passenger in the
 13 vehicle. Both individuals were detained
 14 and transported to the Lowndes County
 15 Detention Facility. And have you told me
 16 everything you can recall about their
 17 arrest and transportation?
 18 A. Yes, sir.
 19 (Plaintiff's Exhibit 4 was marked
 20 for identification.)
 21 Q. Okay. Let me show you what's marked as
 22 Plaintiff's Exhibit Number 4. And this is
 23 simply a two-page document. Tell me what

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1 this is, please.
 2 A. It's the complaint and the warrant.
 3 Q. Okay. And this also bears your signature?
 4 A. Yes, sir.
 5 Q. On the first page?
 6 A. Yes, sir.
 7 Q. And on the second page down at the bottom
 8 where it says sheriff, by, is that also
 9 your signature?
 10 A. Yes, sir.
 11 Q. And that's simply the document that makes
 12 the charge against Mr. Marshall --
 13 A. That's right.
 14 Q. -- on the first page, and on the second
 15 page it's a warrant to arrest him?
 16 A. That's correct.
 17 (Plaintiff's Exhibit 5 was marked
 18 for identification.)
 19 Q. Okay. And I think the last thing is
 20 Plaintiff's Exhibit Number 5. Tell me what
 21 that is, please.
 22 A. It's an incident/offense report.
 23 Q. Okay. We've gone through several pieces of

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1 paper that you have either authored or had
 2 something to do with. Tell me all of the
 3 paperwork that you have to fill out in
 4 making an arrest such as you made on
 5 Mr. Marshall.
 6 A. You mean for a case file or --
 7 Q. Yeah. Yeah. Have we in front of us all of
 8 the paperwork that you have executed on
 9 Mr. Marshall?
 10 A. You don't -- my statement form is not here.
 11 Q. Right. But other than that.
 12 A. There's an arrest report that's not here.
 13 Q. Okay. Look on the third page of the
 14 exhibit I've just handed you.
 15 A. Okay.
 16 Q. Is that the arrest report?
 17 A. This is the arrest report right here.
 18 Q. Is what you have in these exhibits that
 19 I've given you all of the paperwork you
 20 would have completed on Mr. Marshall?
 21 A. Yes, sir, I believe so.
 22 Q. All right. Let's go to Plaintiff's Exhibit
 23 Number 5. That's a uniform

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1 incident/offense report?
 2 A. That's right.
 3 Q. And tell me what that's for. What's the
 4 purpose of that?
 5 A. It just lists myself as whoever is making
 6 out the report, the agency, the charges or
 7 the incident, the place of occurrence, the
 8 date and time. And there's an area in here
 9 where you will list items that will be
 10 recovered or whatever. And then down at
 11 the bottom -- underneath that it will list
 12 the dollar amount for the items recovered,
 13 vehicle information.
 14 On the back page is the information for
 15 the offender or whoever, suspect, and then
 16 an area for the witnesses, a narrative, and
 17 then an area for the signature of the
 18 officer or whoever the complainant is and
 19 case disposition area.
 20 Q. And did you fill out these first two
 21 pages?
 22 A. Yes, sir.
 23 Q. And that's your signature at the bottom of

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1 the second page?
 2 A. Yes, sir.
 3 Q. And then tell me about this third page,
 4 which is the Alabama Uniform Arrest Report.
 5 A. Basically the jail does this. They do this
 6 in booking. And it has the -- you see the
 7 defendant's name up at the top, his height,
 8 weight, color, all of his information, the
 9 place -- the occurrence of the arrest and
 10 the charges and then the officer that did
 11 the booking.
 12 Q. And that would be Marilyn Mealing?
 13 A. That's correct.
 14 Q. Do you know her?
 15 A. Yes, sir.
 16 Q. And is that her signature?
 17 A. I guess it is.
 18 Q. Have you seen her signature before?
 19 A. No.
 20 Q. Okay. Did you retain a copy of this
 21 Alabama Uniform Arrest Report?
 22 A. Yes.
 23 Q. And is this a true and correct copy of that

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1 arrest report?
 2 A. Yes.
 3 Q. And you normally maintain those in your
 4 case file --
 5 A. That's correct.
 6 Q. -- in the normal course of business?
 7 A. That's correct.
 8 Q. All right. Now, you had mentioned that you
 9 had a statement also that you wrote out.
 10 I'm going to show you Plaintiff's Exhibit
 11 Number 6 and ask you if that's a copy of
 12 your statement.
 13 (Plaintiff's Exhibit 6 was marked
 14 for identification.)
 15 A. Yes, sir.
 16 Q. Okay. Let's go through this for just a
 17 second if we could.
 18 A. Okay.
 19 Q. And I think this will be close to the last
 20 thing that we're going to do today.
 21 This was June 28th, 2005. Is that the
 22 date that all this happened?
 23 A. Yes, sir.

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1 Q. And the time, 7:32 p.m., is that the time
 2 that you wrote the statement?
 3 A. Yes, sir.
 4 Q. This indicates that the incident happened
 5 sometime at about one o'clock this
 6 afternoon --
 7 A. That's right.
 8 Q. -- that afternoon.
 9 A. Uh-huh (positive response).
 10 Q. And you say that you were traveling with
 11 Mr. Hutson north on Lowndes County Road 7
 12 and met Mr. Marshall's blue Chevrolet Nova.
 13 A. Yes, sir.
 14 Q. You turned around in an attempt to catch up
 15 with the vehicle.
 16 A. That's correct.
 17 Q. As we caught up with the vehicle, I
 18 observed that neither the driver nor the
 19 passenger were wearing seat belts. Why was
 20 that important to you? Why did you put
 21 that in there?
 22 A. Probable cause for the stop.
 23 Q. But what you really wanted to talk to him

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1 about was drugs?
 2 A. That's correct.
 3 Q. And you placed your blue light on the dash
 4 to gain the attention of the driver. And
 5 you pulled beside his vehicle, showed
 6 badges. It says here we showed the driver
 7 our badges. Earlier you mentioned that
 8 Mr. Hutson showed the driver his badge.
 9 Did you show the driver your badge as well?
 10 A. If that's what the state -- but it also
 11 says that the driver looked out the window
 12 and screamed that he wasn't going to pull
 13 the vehicle over.
 14 Q. No. The question was, did you show him
 15 your badge as well?
 16 A. If that's what the statement says, then I
 17 did it.
 18 Q. Do you have any independent recollection of
 19 showing him your badge?
 20 A. It's been two years, almost three years. I
 21 don't -- I can't remember whether I did or
 22 not.
 23 Q. Fair enough. And it says that he threw

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1 drug evidence out the window at about the
 2 102 mile marker. And if I'm correct, based
 3 on the analysis and your recollection of
 4 that analysis, there was nothing to
 5 indicate it was drug evidence, correct, in
 6 the final analysis?
 7 A. That's correct.
 8 Q. But at that time you thought it was drug
 9 residue?
 10 A. I still believe that.
 11 Q. Okay. Did you do any field tests on that
 12 residue?
 13 A. No, sir.
 14 Q. Have you got the equipment to do field
 15 tests?
 16 A. Yes, sir.
 17 Q. You don't have gas chromatography?
 18 A. No, sir.
 19 Q. Pursued Mr. Marshall for 2.4 miles.
 20 Marshall was still responding violently.
 21 Did he ever make a violent move toward you?
 22 A. Where are you at?
 23 Q. I'm down here at the -- close to the bottom

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1 of the page. I instructed Mr. Marshall to
 2 exit his vehicle and get on the ground.
 3 A. Okay.
 4 Q. You see that?
 5 A. Yes.
 6 Q. Did he ever make a violent move toward you?
 7 A. No. We had weapons drawn.
 8 Q. Okay. Never attempted to hit you or
 9 anything else?
 10 A. No. He's at his vehicle. We're at ours.
 11 Q. Never attempted to run away?
 12 A. No, sir.
 13 Q. Fired my service weapon into the ground. I
 14 meant to ask you about that. Does the
 15 Lowndes County Sheriff's Office have a use
 16 of force policy?
 17 A. Yes, sir.
 18 Q. And what does that use of force policy say
 19 about discharging a firearm?
 20 A. I'm not exactly sure.
 21 Q. Okay. On the second page it says, again,
 22 that you located and recovered an empty
 23 torn baggy that at one time had contained

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1 cocaine. And you've signed that?
 2 A. Yes, sir.
 3 Q. Okay. Are you sure that at one time that
 4 it contained cocaine?
 5 MR. MASTERS: Object to the form.
 6 A. Yes, sir.
 7 Q. And that is your statement that you wrote
 8 in connection with this case?
 9 A. Yes, sir.
 10 Q. How were you dressed that day?
 11 A. I don't remember.
 12 Q. Middle of June -- or end of June. Pretty
 13 hot. Were you probably -- were you
 14 wearing -- do you recall whether or not you
 15 would have been wearing short-sleeve shirts
 16 at that time?
 17 A. Probably.
 18 Q. Okay. And the drug task force operates in
 19 some cases undercover; correct?
 20 A. That's correct.
 21 Q. You operate in plain clothes?
 22 A. That's correct.
 23 MR. LEWIS: Let me have about five

Deposition of Christopher West

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1 minutes, Daryl.
 2 MR. MASTERS. That's fine. Take
 3 whatever time you need.
 4 (A brief recess was taken.)
 5 Q. (Mr. Lewis continuing:) I have just a
 6 couple more questions.
 7 Did you fill out a use of force report
 8 form following the discharge of your
 9 weapon?
 10 A. At that time I don't believe our department
 11 had one. And I still don't believe we had
 12 one, but what I did do was I did a
 13 statement and gave it to the sheriff.
 14 Q. Is that this statement that we've just
 15 seen?
 16 A. I think it's the same statement.
 17 Q. Were you reprimanded in any way for doing
 18 that?
 19 A. No, sir.
 20 Q. Have you ever been reprimanded during your
 21 period with the Lowndes County Sheriff's
 22 Office?
 23 A. Not one time.

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1 Q. Are you aware of any citizen complaints
 2 against you that were investigated?
 3 A. I'm sure citizens have complained.
 4 MR. LEWIS: I believe that's all I
 5 have. Thank you.
 6
 7 (Deposition concluded at
 8 approximately 10:35 a.m.)
 9
 10 *****
 11 FURTHER DEPONENT SAITH NOT
 12 *****
 13
 14 REPORTER'S CERTIFICATE
 15
 16 STATE OF ALABAMA:
 17 MONTGOMERY COUNTY:
 18
 19 I, Tracye Sadler Blackwell, Certified
 20 Court Reporter and Commissioner for the State of
 21 Alabama at Large, do hereby certify that I reported
 22 the deposition of:
 23

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1 CHRISTOPHER WEST
 2 who was duly sworn by me to speak the truth, the
 3 whole truth and nothing but the truth, in the
 4 matter of:
 5 RICHARD MARSHALL,
 6 Plaintiff,
 7 vs.
 8 CHRIS WEST, in his individual
 9 Capacity, LASHUN HUTSON, in his
 10 Individual capacity,
 11 Defendants.
 12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE MIDDLE DISTRICT OF ALABAMA
 14 NORTHERN DIVISION
 15 Case Number 2:06-cv-701-ID.CSC
 16 on January 21, 2008.
 17 The foregoing 62 computer-printed pages
 18 contain a true and correct transcript of the
 19 examination of said witness by counsel for the
 20 parties set out herein. The reading and signing of
 21 same is hereby waived.
 22 I further certify that I am neither of
 23 kin nor of counsel to the parties to said cause nor

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1 in any manner interested in the results thereof.
 2 This 6th day of February 2008.
 3
 4
 5

Tracye Sadler Blackwell
 ACCR No. 294
 Expiration date: 9-30-2008
 Certified Court Reporter
 and Commissioner for the State
 of Alabama at Large

DEPOSITION OF G. LASHUN HUTSON

January 21, 2008

Pages 1 through 38

PREPARED BY:

Haislip, Ragan, Green, Starkie & Watson, P.C.

566 South Perry Street

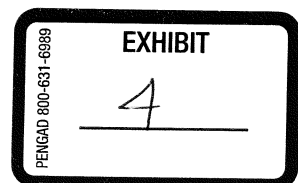
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Deposition of G. Lashun Hutson

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January 21, 2008

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RICHARD MARSHALL,

Plaintiff,

vs.

CIVIL ACTION NO.
2:06-cv-701-ID.CSC

CHRIS WEST, in his individual
capacity, LASHUN HUTSON, in his
individual capacity,

Defendants.

DEPOSITION OF G. LASHUN HUTSON, taken
pursuant to stipulation and agreement before Tracye
Sadler Blackwell, Certified Court Reporter and
Commissioner for the State of Alabama at Large, in
the Law Offices of Webb & Eley, 7475 Halcyon Pointe
Drive, Montgomery, Alabama, on January 21, 2008,
commencing at approximately 10:40 a.m.

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APPEARANCES

ON BEHALF OF THE PLAINTIFF:

Mr. Jay Lewis
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Attorney at Law
847 South McDonough Street
Montgomery, Alabama

ON BEHALF OF THE DEFENDANTS:

Mr. Daryl L. Masters
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Mr. Rick A. Howard
NIX, HOLTSFORD, GILLILAND, HIGGINS & HITSON
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4001 Carmichael Road
Montgomery, AL 36106

ALSO PRESENT:

Mr. Christopher West

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EXAMINATION INDEX

BY MR. LEWIS 5

PLAINTIFF'S EXHIBIT

6-28-05 Statement Form of Lashun Hutson 34

STIPULATIONS

It is hereby stipulated and agreed by and
between counsel representing the parties that the
deposition of G. LASHUN HUTSON is taken pursuant to
the Federal Rules of Civil Procedure and that said
deposition may be taken before Tracye Sadler
Blackwell, Certified Court Reporter and
Commissioner for the State of Alabama at Large,
without the formality of a commission, that
objections to questions other than objections as to
the form of the question need not be made at this

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as the said deposition may be offered in evidence
or used for any other purpose by either party
provided for by the Statute.

It is further stipulated and agreed by and
between counsel representing the parties in this
case that the filing of said deposition is hereby
waived and may be introduced at the trial of this
case or used in any other manner by either party
hereto provided for by the Statute regardless of
the waiving of the filing of the same.

It is further stipulated and agreed by and
between the parties hereto and the witness that the
signature of the witness to this deposition is
hereby waived.

THE COURT REPORTER: Usual
stipulations?

MR. HOWARD: Sure.

MR. MASTERS: Sure.

Deposition of G. Lashun Hutson

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1 G. LASHUN HUTSON
 2 The witness, after having first been duly sworn
 3 to speak the truth, the whole truth, and nothing
 4 but the truth, testified as follows:
 5 EXAMINATION
 6 BY MR. LEWIS:
 7 Q. Tell us your name, please.
 8 A. G. Lashun Hutson.
 9 Q. Mr. Hutson, how are you employed?
 10 A. Lowndes County Sheriff's Department.
 11 Q. And what's your position there?
 12 A. Sheriff's deputy.
 13 Q. Do you have any particular rank?
 14 A. No.
 15 Q. On June 28th, 2005, where were you
 16 employed?
 17 A. 2nd Judicial Drug Task Force.
 18 Q. Were you employed with any city police
 19 agency?
 20 A. Hayneville Police, yes, sir.
 21 Q. But now you're with the Lowndes County
 22 Sheriff's Office?
 23 A. Uh-huh (positive response).

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1 Q. You're going to have to say yes or no.
 2 A. Yes.
 3 Q. Okay. Tell me about your educational
 4 background.
 5 A. My educational background?
 6 Q. Yeah.
 7 A. High school graduate. I've got some
 8 college. Marine Corps. I've got a lot of
 9 training from there.
 10 Q. How much college?
 11 A. Couple of semesters.
 12 Q. When did you graduate from high school?
 13 A. '77.
 14 Q. All right. Have you been to any advanced
 15 law enforcement training?
 16 A. I've been to a few.
 17 Q. All right. Have you been to the FBI
 18 Academy at Quantico?
 19 A. No.
 20 Q. Any law enforcement experience outside of
 21 the academy that's required for POST
 22 certification, any long-term -- by that I
 23 mean over six weeks -- courses in law

Page 7

1 enforcement?
 2 A. Not over six weeks. Some two-week
 3 courses. No six-week courses.
 4 Q. Do you have any particular certifications
 5 in any special branch of law enforcement?
 6 A. Drug enforcement.
 7 Q. How did you get your training for drug
 8 enforcement?
 9 A. The academy in Mississippi.
 10 Q. How long a course was that?
 11 A. I think that course is three weeks, two
 12 weeks.
 13 Q. When did you go to that?
 14 A. About three and a half years ago.
 15 Q. Okay. And what's your address?
 16 A. My work address or --
 17 Q. Physical, home address.
 18 A. It's going to be 3716 Fieldcrest Drive.
 19 Q. 3716 --
 20 A. 16.
 21 Q. -- Fieldcrest?
 22 A. Uh-huh (positive response).
 23 Q. And what city is that?

Page 8

1 A. Montgomery.
 2 Q. Is that in the Fieldcrest Apartments?
 3 A. No. Those are houses.
 4 Q. Houses. Okay. What's your date of birth?
 5 A. 9-21-58.
 6 Q. And did you tell me when you graduated from
 7 high school?
 8 A. 1977.
 9 Q. And what college have you attended?
 10 A. Albany State.
 11 Q. Where?
 12 A. Albany State in Georgia.
 13 Q. Albany State. Okay. And when did you join
 14 the -- well, tell me about your law
 15 enforcement employment experience. When
 16 did you first get into law enforcement?
 17 A. First got into law enforcement in 1995
 18 after I got out of the Marine Corps with
 19 the Dougherty County Sheriff's Department.
 20 I worked corrections with them from '95
 21 until '98 when I came to Lowndes County.
 22 Q. And in 1998 what agency did you work for?
 23 A. Sheriff's department. Lowndes County

Deposition of G. Lashun Hutson

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1 Sheriff's Department.
 2 Q. How long did you stay with Lowndes County
 3 Sheriff's Office?
 4 A. About two years, three years. I can't
 5 remember.
 6 Q. Where did you go from there?
 7 A. Hayneville Police Department.
 8 Q. And did you remain at the Hayneville Police
 9 Department from the time you left the
 10 sheriff's office until the time you
 11 returned to the sheriff's office?
 12 A. Right.
 13 Q. So that would have -- when did you return
 14 to the sheriff's office?
 15 A. I can't give you the -- I don't -- I don't
 16 know.
 17 Q. But during 2005 you were still with
 18 Hayneville Police Department?
 19 A. Right.
 20 Q. All right. Are you familiar with the use
 21 of force policy of the Lowndes County
 22 Sheriff's Office?
 23 A. I'm not familiar with it, but I think they

Page 10

1 have one.
 2 Q. All right. Have you ever filled out a use
 3 of force report?
 4 A. No.
 5 Q. Tell me what you were doing on June 28th,
 6 2005, which we all agree is the date of the
 7 incident involving Mr. Marshall.
 8 A. What I was doing at what time?
 9 Q. Well, starting early in that day what were
 10 you -- when you got to work, what were you
 11 doing?
 12 A. It's hard to say exactly what I was doing.
 13 Q. At what time did you -- if you did, did you
 14 leave the sheriff's office?
 15 A. You mean the DTF office?
 16 Q. I'm sorry. The DTF office.
 17 A. It's hard to say exactly what time I left.
 18 Q. And the DTF office is a separate facility;
 19 correct?
 20 A. Correct.
 21 Q. And where is the DTF office?
 22 A. It's down the street from the sheriff's
 23 office.

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1 Q. In Hayneville?
 2 A. In Hayneville.
 3 Q. Do you recall who else was on duty that day
 4 with the DTF?
 5 By DTF, I mean drug task force.
 6 A. I can't tell you exactly who was on and who
 7 was off. That would be up to Lieutenant
 8 West. But I was on and Lieutenant West was
 9 on.
 10 Q. Do you recall why you left the DTF office?
 11 A. I probably left more than one time. But
 12 the last time I left it was with Lieutenant
 13 West.
 14 Q. All right. What did you leave in?
 15 A. We left in a blue Lincoln.
 16 Q. What was the purpose of leaving with
 17 Mr. West?
 18 A. We were going to a gentleman's house by the
 19 name of -- I know him as "Blood." You guys
 20 keep calling him Mr. Marshall -- that lives
 21 up in the -- south of Hayneville.
 22 Q. Did you know Mr. Marshall?
 23 A. I had heard his name, "Blood."

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1 Q. Had you met him?
 2 A. Not yet.
 3 Q. Okay. So prior to the time that you went
 4 out with Mr. West you had not had any law
 5 enforcement contact with Mr. Marshall?
 6 A. No, I hadn't.
 7 Q. Do you know why you were going out looking
 8 for Mr. Marshall?
 9 A. I was going with Lieutenant West. He
 10 needed to talk to him.
 11 Q. You didn't have any independent knowledge
 12 of why you were out there?
 13 A. No. I had an inkling why we were out
 14 there, but as far as specifics, no.
 15 Q. All right. What was that inkling?
 16 A. Dope.
 17 Q. Had you personally received any information
 18 about Mr. Marshall and any dope?
 19 A. I had heard his name.
 20 Q. In connection with what?
 21 A. In connection with the sale of drugs.
 22 Q. From whom did you hear his name?
 23 A. People.

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1 Q. You want to elaborate on that?
 2 A. No.
 3 Q. Do you recall what people you heard talking
 4 about Mr. Marshall with drugs?
 5 A. People in that line of business.
 6 Q. And what people are you talking about?
 7 A. People I may have arrested that wanted to
 8 help themselves out.
 9 Q. Do you have any specific names of people?
 10 A. No.
 11 Q. All right. So you leave with
 12 Mr. Marshall. Tell me what happens then.
 13 A. Lieutenant and I, we go to Mr. Marshall's
 14 house. He wasn't there. We did knock.
 15 Nobody came to the door. We left and we
 16 was having a conversation on the way back
 17 about a little community I was familiar
 18 with called Casey.
 19 Q. Is that C-A-S-E-Y?
 20 A. Correct.
 21 Q. And what did you tell Mr. Marshall about --
 22 I mean, Mr. West about the Casey community?
 23 A. He asked me -- he said, where is it? I

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1 said, it's right down on County Road 7. I
 2 said, he might be down there. And so we
 3 were going to head down there. I was
 4 looking for another individual. And as we
 5 were going down County Road 7, Lieutenant
 6 perks up and said, there he goes right
 7 there. And I'm looking and I see the blue
 8 Nova coming at us.
 9 Q. Who is driving the car?
 10 A. Which car?
 11 Q. Your car.
 12 A. Lieutenant West.
 13 Q. All right. What reason did you have to
 14 believe that Mr. Marshall might be at the
 15 Casey community?
 16 A. I've heard his name in the community of the
 17 drug community that he's a drug dealer and
 18 he, you know, frequents different
 19 communities and Casey was one of them.
 20 Q. Other than this incident on June 28th,
 21 2005, have you ever arrested Mr. Marshall?
 22 A. No.
 23 Q. Since this incident have you had occasion

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1 to arrest Mr. Marshall?
 2 A. No.
 3 Q. Since this incident have you had occasion
 4 to know whether Mr. Marshall has been
 5 arrested by anybody else?
 6 A. No.
 7 Q. So you see a blue Chevrolet Nova after
 8 Mr. West says there's his car or there he
 9 is?
 10 A. Uh-huh (positive response).
 11 Q. Okay. What happens then?
 12 A. Lieutenant goes down. We pass each other.
 13 Lieutenant turns around and we come back up
 14 behind him to make a stop.
 15 Q. And what was your purpose for making a
 16 stop?
 17 A. I -- I don't know. Whatever Lieutenant
 18 West told you his probable cause was for
 19 stopping him.
 20 Q. Did you see any probable cause for making a
 21 stop?
 22 A. I wasn't driving.
 23 Q. No. That wasn't the question. Did you see

Page 16

1 any probable cause for making a stop?
 2 A. I wasn't driving.
 3 Q. Let me rephrase the question.
 4 A. Okay.
 5 Q. Did you see any probable cause for making a
 6 stop?
 7 A. Let me see if I can -- I wasn't driving.
 8 MR. HOWARD: If you saw it, yes.
 9 If you didn't see it, no, or
 10 were you looking? Just answer
 11 his question.
 12 A. No. I just looked -- when he said there he
 13 is, I looked and I identified the subject.
 14 I wasn't looking for a probable cause.
 15 Q. So you didn't see any probable cause
 16 because you weren't looking for any?
 17 A. Right.
 18 Q. Okay. So if there was probable cause
 19 determined, it was Mr. West who determined
 20 it?
 21 A. Correct.
 22 Q. Okay. You said that you looked and you saw
 23 that it was Mr. Marshall?

Deposition of G. Lashun Hutson

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1 A. I looked and saw an individual driving the
 2 car. There was two individuals in it, and
 3 I looked and saw the individual driving the
 4 car.
 5 Q. You didn't know him as Mr. Marshall?
 6 A. No.
 7 Q. Because you had never met Mr. Marshall?
 8 A. No.
 9 Q. All right. So Lieutenant West turns his
 10 car around and pulls in behind
 11 Mr. Marshall's car or the car that you've
 12 identified as being the blue Nova you were
 13 looking for?
 14 A. Right.
 15 Q. How fast was that Nova going?
 16 A. I would have guessed the speed limit.
 17 Q. Did he speed up after you pulled in behind
 18 it?
 19 A. Once we got on 21 he did.
 20 Q. But he didn't until you got to 21?
 21 A. No.
 22 Q. All right. What happened after you pulled
 23 in behind him?

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1 A. I looked -- just looked in the car just to
 2 see -- nobody was moving and Lieutenant
 3 said, go ahead and light them up.
 4 Q. And what did you take that to mean?
 5 A. Turn the blue light on.
 6 Q. Did you do that?
 7 A. Yes.
 8 Q. That car doesn't have built-in blue lights?
 9 A. No.
 10 Q. You had a portable blue light?
 11 A. Had a portable blue light.
 12 Q. Like anybody could buy?
 13 A. Any law enforcement agency could buy.
 14 Q. All right. And where did you put that blue
 15 light?
 16 A. I put it on the dash initially.
 17 Q. Okay. And what happened then?
 18 A. Mr. Marshall looked in his rear-view
 19 mirror, he looked down in his side mirror,
 20 and he just kept driving.
 21 Q. At some point did your car pull up next to
 22 his car while you were still on County
 23 Road 7?

Page 19

1 A. Yes. We had came out of the curve. When
 2 we got on the straightaway, Lieutenant got
 3 to the side of them.
 4 Q. What, if anything, did you do at that time?
 5 A. At that time I rolled my window down, I
 6 pulled my badge, and I said, pull over.
 7 And he looked, and he said, what y'all
 8 want, man? And I said, pull over. And he
 9 kept driving.
 10 Q. What happened then?
 11 A. After he got back behind him -- I can't
 12 remember if it's because of oncoming
 13 traffic or for whatever reason he got back
 14 behind him. And the blue light was still
 15 going. And then we had came to the
 16 intersection of 21.
 17 Q. All right. Which way did Mr. Marshall
 18 turn?
 19 A. He turned right.
 20 Q. And that's headed toward Wilcox County?
 21 A. South on 21, yes.
 22 Q. So you got onto Highway 21, which is a
 23 larger highway?

Page 20

1 A. You could say larger.
 2 Q. Still two-lane?
 3 A. Correct.
 4 Q. Okay. What happened then?
 5 A. We continued behind him. LT found a spot.
 6 He got beside him again. And I reached up.
 7 I got the light off of the dash. It's
 8 still blinking blue. And I got my badge
 9 and I held it up. I said, pull over. And
 10 he said, mother fuck y'all, I ain't
 11 stopping. And about that time LT yells in
 12 my ear and says, pull over, and he -- he's
 13 got his badge up. And we're both yelling,
 14 windows down -- you can imagine how close
 15 we were -- to pull over, but he still
 16 refused.
 17 Q. What were you wearing?
 18 A. I can't tell you exactly what I was
 19 wearing.
 20 Q. Civilian clothes?
 21 A. Probably.
 22 Q. Was that just a blue light or was it a
 23 blue-and-white light?

Page 21

1 A. It's a blue light.
 2 Q. Blue light. All right. So after he did
 3 not pull over, what did you do then?
 4 A. I told LT I don't think he's going to
 5 stop. And I put the light back on the dash
 6 and I sat back. LT dropped back behind
 7 him.
 8 Q. At any point did you display a weapon --
 9 A. No.
 10 Q. -- at the time you were driving?
 11 A. No.
 12 Q. All right. So Lieutenant West -- and when
 13 you say LT, you're talking about Lieutenant
 14 West?
 15 A. I'm talking about Lieutenant West.
 16 Q. Okay. Lieutenant West pulls back behind
 17 him; correct?
 18 A. Correct.
 19 Q. What's the next thing that happens?
 20 A. We come up on a cattle truck. There's a
 21 cattle truck. It slows us down. And LT
 22 went to the side, and he "pitted" him.
 23 Q. Okay. When you say he "pitted" him, you're

Page 23

1 window and when he tossed something. It
 2 hit our windshield to be exact.
 3 Q. And did you identify what it was at that
 4 time?
 5 A. Not at that time, no.
 6 Q. You said you came up behind a cattle truck
 7 and slowed down. How slow were you going?
 8 A. We were going less than the speed limit at
 9 that time.
 10 Q. Had you been going at any time prior to
 11 that faster than the speed limit?
 12 A. Yes.
 13 Q. How fast would you say is the fastest you
 14 were going?
 15 A. If I had to guess -- and it's purely a
 16 guess -- I would say about 70.
 17 Q. Okay. And the speed limit on that road
 18 is --
 19 A. 55.
 20 Q. 55. Okay.
 21 All right. So setting the scene, we've
 22 now got Mr. Marshall's car on the shoulder
 23 of the road facing back toward Hayneville,

Page 22

1 talking about executing a precision
 2 intervention technique?
 3 A. If that's what you're calling it now.
 4 Q. Well, what do you call it?
 5 A. I don't call it anything.
 6 Q. Okay. You just "pitted" him?
 7 A. Right.
 8 Q. And basically that's hitting the driver's
 9 side fender of his car with the front
 10 passenger's side bumper or fender of your
 11 car?
 12 A. You can do it that way or vice versa.
 13 Q. Well, which way was it done this time?
 14 A. The way you just stated.
 15 Q. Okay. And it spun his car out?
 16 A. Correct.
 17 Q. He ended up going the opposite direction on
 18 the other side of the road?
 19 A. On the shoulder, yes.
 20 Q. Did you observe anything else while you
 21 were driving down the road behind
 22 Mr. Marshall?
 23 A. I observed his hand when it came out of the

Page 24

1 and Lieutenant West pulls his car so it's
 2 angled toward Mr. Marshall's car?
 3 A. Correct.
 4 Q. What did you do then?
 5 A. We both exited the vehicles, but we stayed
 6 behind the doors for protection.
 7 Q. What did you say, if anything?
 8 A. Lieutenant was yelling to the driver. I
 9 just yelled to the passenger, passenger,
 10 don't move.
 11 Q. And did the passenger move?
 12 A. No. He sat there like a statue.
 13 Q. And did the driver move?
 14 A. Yes.
 15 Q. And what was Mr. West yelling to the
 16 driver?
 17 A. He told him to exit the vehicle and get on
 18 the ground.
 19 Q. All right. What, if anything, did Mr. West
 20 do -- or did Mr. Marshall do in response to
 21 that?
 22 A. He opened the door. He got out, but he
 23 stayed between the door and his vehicle.

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1 Q. So he obeyed the command to get out of the
 2 car?
 3 A. Yes.
 4 Q. Was he saying anything at that time?
 5 A. He was cursing, being very belligerent.
 6 Q. What, if anything, did Mr. West do?
 7 A. He kept yelling the order for him to get on
 8 the ground.
 9 Q. All right. Did he take any other action?
 10 A. Did who take any action?
 11 Q. Mr. West.
 12 A. He kept yelling for Mr. Marshall to get on
 13 the ground.
 14 Q. All right. Did he fire his weapon?
 15 A. Yes.
 16 Q. In what direction did he fire his weapon?
 17 A. In Mr. Marshall's direction but into the
 18 ground.
 19 Q. And at that time were you looking at the
 20 passenger or were you looking at
 21 Mr. Marshall? Where were you looking?
 22 A. My angle, I could see them both. I could
 23 look at Mr. Marshall and right past him I

Page 26

1 could see the passenger.
 2 Q. All right. And after Mr. West fired the
 3 shot, what, if anything, did Mr. Marshall
 4 do?
 5 A. It froze him. Because Mr. Marshall was
 6 reaching back into his vehicle, and I
 7 believe that's the reason Lieutenant fired
 8 his weapon. When he fired the weapon, it
 9 froze Mr. Marshall, and he came out.
 10 Because I don't think he expected that to
 11 happen, so it froze him.
 12 Q. So you're holding your hands up. He came
 13 out with his hands up?
 14 A. Yeah, one on the window of the car and he
 15 had the other one like stunned.
 16 Q. Up in the air?
 17 A. (Witness nods head.)
 18 Q. Yes?
 19 A. Yes.
 20 Q. Did he get on the ground then?
 21 A. No.
 22 Q. What happened?
 23 A. Lieutenant approached him, and once he got

Page 27

1 close enough to him where he could put his
 2 hands on him, he put him on the ground.
 3 Q. At some point did his pants come off? Did
 4 Mr. Marshall's pants come off?
 5 A. During the tussle with the lieutenant they
 6 did.
 7 Q. Did you see Mr. Marshall ever take a swing
 8 at the lieutenant, ever try to run away,
 9 anything like that?
 10 A. Nothing like that, no.
 11 Q. So Mr. Marshall ends up on the ground with
 12 his hands behind him cuffed?
 13 A. After Lieutenant put his hands behind him
 14 cuffed.
 15 Q. Right. And what's happening with the
 16 passenger all this time?
 17 A. I've still got my weapon on him and he's
 18 still sitting there like a statue.
 19 Q. At any time did you feel the need to go to
 20 the aid of the lieutenant?
 21 A. No. He was doing pretty good.
 22 Q. All right. At what point did the passenger
 23 emerge from the vehicle?

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1 A. Once Lieutenant got the cuffs on
 2 Mr. Marshall, then I proceeded around to
 3 the passenger.
 4 Q. And did the passenger cooperate with you?
 5 A. Yes, sir.
 6 Q. And you cuffed him and put him on the
 7 ground?
 8 A. Got him out and then I sat him on the bank
 9 there.
 10 Q. Tell me what happened then.
 11 A. I walked back to the vehicle where
 12 Lieutenant was with Mr. Marshall. When I
 13 looked inside, I saw the .357 on the seat.
 14 Q. And that was a .357 Magnum revolver?
 15 A. Yes.
 16 Q. Did you search the vehicle?
 17 A. I can't remember if we searched it right
 18 then or if we searched it later. But we
 19 looked in it enough to see that there was a
 20 .357 on the seat, bullets on the floorboard
 21 and in the ashtray.
 22 Q. Do you recall whether or not, whether you
 23 searched it at the scene or you searched it

Deposition of G. Lashun Hutson

Marshall vs. West; Hutson

January 21, 2008

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1 later, you found anything else of
 2 contraband nature?
 3 A. Nothing that I can think of, no, sir.
 4 Q. Just kind of cutting to the chase, did you
 5 see Mr. West serve Mr. Marshall?
 6 A. I saw him pat him down.
 7 Q. Did you see him remove anything from his
 8 pants?
 9 A. No.
 10 Q. Did you see him remove any money?
 11 A. No.
 12 Q. Were you watching him enough to know
 13 whether or not he removed any money?
 14 A. I watched him enough to know that he had
 15 him secured so I could go secure the
 16 passenger.
 17 Q. So there was a period of time that you just
 18 lost sight of what Mr. West and
 19 Mr. Marshall were doing?
 20 A. Yes.
 21 Q. Because you were concentrating on the
 22 passenger?
 23 A. Correct.

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1 Q. I think we've already heard that at that
 2 point Mr. West called for a transportation
 3 unit, a marked unit, and that another
 4 deputy came, took Mr. Marshall away, and
 5 the passenger rode with you; is that
 6 correct?
 7 A. No.
 8 Q. Okay. Tell me what happened.
 9 A. The passenger rode with the lieutenant. I
 10 drove the Nova.
 11 Q. Okay. All right. Following the incident
 12 at which Mr. Marshall was handcuffed, did
 13 you see Mr. Marshall become violent in any
 14 way?
 15 A. While the lieutenant was in the car, he had
 16 gotten back up off the ground. And I told
 17 him -- I said, get back on the ground. And
 18 I had to go over and put him back on the
 19 ground.
 20 Q. But he didn't attempt to run away?
 21 A. I don't know if he was attempting to run
 22 away or not, but he got up.
 23 Q. But you walked over to him and put him back

Page 31

1 on the ground?
 2 A. Right.
 3 Q. And could that have been while the
 4 lieutenant was searching the vehicle?
 5 A. The lieutenant was leaned over in the
 6 vehicle, yes.
 7 Q. On the way back to the sheriff's office
 8 what, if anything, happened?
 9 A. Happened with me?
 10 Q. Yeah.
 11 A. Nothing happened with me.
 12 Q. You didn't stop at the side of the road?
 13 A. We stopped when the marked unit got -- tire
 14 started to go down. And I don't remember
 15 that whole incident fully because I wasn't
 16 concentrating on that.
 17 Q. Did you assist in the roadside search for
 18 any contraband?
 19 A. Yes.
 20 Q. And was any contraband located?
 21 A. We located a corner-torn baggy.
 22 Q. And describe that baggy for me.
 23 A. A sandwich bag where you would take the

Page 32

1 corner end and tear it off and tie a knot
 2 in it. That's what it looked like.
 3 Q. And who took custody of that?
 4 A. The lieutenant did.
 5 Q. During that period of time was the
 6 passenger in Mr. Marshall's vehicle still
 7 in the lieutenant's vehicle?
 8 A. I can't recall.
 9 Q. Did you have any role in booking
 10 Mr. Marshall or the passenger?
 11 A. No.
 12 Q. You delivered the passenger where?
 13 A. I didn't deliver the passenger.
 14 Q. Oh, that's right. Mr. West did, didn't he?
 15 A. Uh-huh (positive response).
 16 Q. What did you do with the vehicle?
 17 A. I parked it in front of the jail.
 18 Q. Do you know whether or not that vehicle was
 19 moved during the period of time that
 20 Mr. Marshall was in jail?
 21 A. Lieutenant came out from where I had parked
 22 it. He told me to put it inside. They had
 23 a secure gate there that locks, and he told

Page 33

1 me to move it and put it inside. That's
 2 the only other incident of it being moved
 3 from where I originally parked it.
 4 Q. Do you know whether that car was driven
 5 during any time other than that while
 6 Mr. Marshall was incarcerated?
 7 A. No.
 8 Q. Did that Chevrolet Nova have shoulder
 9 harnesses?
 10 A. I can't recall. I wish I could.
 11 Q. All right. I have shown you what's marked
 12 as Plaintiff's --
 13 (Brief interruption.)
 14 (Plaintiff's Exhibit 7 was marked
 15 for identification.)
 16 Q. I'll show you this one instead of that
 17 one. Do you recognize what I've marked as
 18 Plaintiff's Exhibit Number 7?
 19 A. Uh-huh (positive response). Yes.
 20 Q. Turn to the second page of that. Whose
 21 signature is that?
 22 A. That's mine.
 23 Q. And did you write this yourself?

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1 A. Yes.
 2 Q. All right. And I just want to take a look
 3 at it for just a second.
 4 About two-thirds down the front page it
 5 indicates that Mr. Marshall accelerated at
 6 one point throwing something from the
 7 driver's side window that was later found
 8 to be drug evidence between the 102 and 104
 9 mile marker.
 10 A. Uh-huh (positive response).
 11 Q. Did you later discover that there was no
 12 drug residue found in that baggy?
 13 A. Yes. Later, after Lieutenant had got the
 14 analysis back from forensics, he told me
 15 that it turned out to be no evidence in it.
 16 Q. Okay. I may have asked you this, and if I
 17 did, I apologize. Did you fill out a use
 18 of force form with regard to any activity
 19 in which you engaged on June 28th, 2005?
 20 A. No.
 21 Q. Is there a policy of the drug task force
 22 that such reports be filled out?
 23 A. If use of force was used -- I'm not sure of

Page 35

1 a policy -- we would put it in our
 2 statement.
 3 Q. So this Plaintiff's Exhibit Number 7 would
 4 constitute any report that you would be
 5 required to file?
 6 A. If I had used force.
 7 Q. Were you reprimanded for anything that
 8 happened on that date?
 9 A. No.
 10 Q. Have you ever been reprimanded by the
 11 Lowndes County Sheriff's Office?
 12 A. Yes.
 13 Q. For what?
 14 A. Oh, I can't remember. It was during
 15 Sheriff Varner's time.
 16 Q. You can't recall anything that you were
 17 reprimanded for?
 18 A. Once about a radio. That's -- not
 19 answering the radio or the radio not being
 20 loud -- I can't remember. It was a radio
 21 though.
 22 Q. Anything having to do with citizen
 23 complaints?

Page 36

1 A. I'm pretty sure some citizens have
 2 complained.
 3 Q. But were you ever disciplined in connection
 4 with citizen complaints?
 5 A. No. No.
 6 Q. Has your POST certification ever been
 7 suspended?
 8 A. No.
 9 MR. LEWIS: Give us a minute.
 10 (A brief recess was taken.)
 11 Q. (Mr. Lewis continuing:) Did you have
 12 any -- and I may have asked this already.
 13 Did you have any part to play other
 14 than writing that statement that's been
 15 marked as Plaintiff's Exhibit Number 7 in
 16 the booking or prosecution of Mr. Marshall?
 17 A. No, sir.
 18 Q. Did you appear at court in connection with
 19 a case against Mr. Marshall?
 20 A. No.
 21 MR. LEWIS: That's all I have.
 22 (Deposition concluded at
 23 approximately 11:15 a.m.)

Deposition of G. Lashun Hutson

Marshall vs. West; Hutson

January 21, 2008

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FURTHER DEPONENT SAITH NOT

REPORTER'S CERTIFICATE

STATE OF ALABAMA:

MONTGOMERY COUNTY:

I, Tracye Sadler Blackwell, Certified
Court Reporter and Commissioner for the State of
Alabama at Large, do hereby certify that I reported
the deposition of:

G. LASHUN HUTSON

who was duly sworn by me to speak the truth, the
whole truth and nothing but the truth, in the
matter of:

RICHARD MARSHALL,

Plaintiff,

vs.

CHRIS WEST, in his individual
Capacity, LASHUN HUTSON, in his
Individual capacity,
Defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

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NORTHERN DIVISION

Case Number 2:06-cv-701-ID.CSC
on January 21, 2008.

The foregoing 37 computer-printed pages
contain a true and correct transcript of the
examination of said witness by counsel for the
parties set out herein. The reading and signing of
same is hereby waived.

I further certify that I am neither of
kin nor of counsel to the parties to said cause nor
in any manner interested in the results thereof.

This 6th day of February 2008.

Tracye Sadler Blackwell
ACCR No. 294
Expiration date: 9-30-2008
Certified Court Reporter
and Commissioner for the State
of Alabama at Large

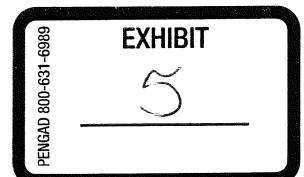
20

2nd Judicial Drug Task Force
Drug Agent
Statement Form

Date: June 28, 2005


Time: 7:32pm

Today at about 1:00 pm I along with Agent Lashun Hutson were traveling North on Lowndes County Road 7 when we met Mr. Richard Marshall's blue Chevrolet Nova. I immediately turned around in an attempt to catch up with the vehicle. As we caught up with the vehicle I observed that neither the driver or the passenger were wearing seatbelts, we placed our blue light on the dash of our vehicle to gain the attention of the driver to pull the vehicle over. The driver looked out the window and screamed that he wasn't going to pull the vehicle over. I then pulled beside his vehicle and we showed the driver Mr. Marshall our badges identifying ourselves as law enforcement officers. He still insisted that he would not pull his vehicle over responding in a very violent manner. This incident occurred approximately 2 miles from the Lowndes County Road 7 and Alabama Highway 21 intersection. As we got to the intersection Mr. Marshall turned right onto highway 21 picking up speed and throwing drug evidence out of the driver's window at about the 102 mile marker. We also observed Mr. Marshall moving around in the seat and with his right hand constantly doing something down in the seat. We pursued Mr. Marshall for another 2.4 miles before forcing his vehicle from the roadway. The vehicle came to rest on the embankment on the opposite side of the highway. Once off the highway Agent Hutson and I took cover behind the doors of our vehicle (weapons drawn). I instructed Mr. Marshall to exit his vehicle and get on the ground. He got out of the vehicle but stood in the door still responding violently and not complying with us, at that time I fired my service weapon into the ground in an attempt to quicken Mr. Marshall into compliance but still he did not comply. Next I approached Mr. Marshall and forced him to the ground experiencing some resistance yet having to force his hands behind his back so as to handcuff him. Agent Hutson approached the passenger's side of the vehicle and removed the passenger after I secured Mr. Marshall. After securing Mr. Marshall I noticed a revolver style handgun on the seat of the vehicle and bullets lying on the seat and in the floor. Mr. Marshall was arrested and transported to the Lowndes County Detention



Facility. I later returned to the area of highway 21 where I observed Mr. Marshall throwing out the evidence. While walking the roadway I located and recovered an empty torn baggie that at one time had contained cocaine.

Signature _____



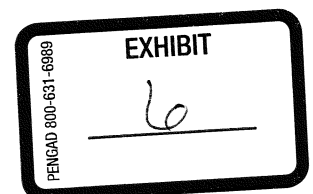
2nd Judicial Circuit
Drug Task Force
Statement Form

Date: June 28, 2005

Time: 18:20

Name: Agent G. LaShun Hutson

On above date at approximately 1:00 pm myself and Lt. C.S. West were traveling North on County Road 7 in Lowndes County when we met Mr. Richard Marshall traveling South in a early model blue Chevrolet Nova. Lt. West stated "That's the vehicle" and began to turn around in an attempt to catch up to the vehicle. Once behind the vehicle the blue light was placed on the dash of our vehicle to alert the driver that he was being stopped, the driver looked in his rear view mirror and left side mirror and continued to drive and began to move around in the seat and appeared to be reaching for something in the seat with his right hand, I stated to Lt. West " Lt. he's moving around a lot I don't think he's going to stop" at which time Lt. West stated "I don't either," at that point we were approximately 2 ½ miles from the intersection of County Road 7 and State Highway 21. Lt. West pulled our vehicle along side Mr. Marshall and I showed him my badge and the blue light and yelled for him to pull over at which time Mr. Marshall stated " Man what the fuck ya'll want" and continued to drive North on County Road 7. We reached State Highway 21 and Mr. Marshall turned south and accelerated at one point throwing something from the driver side window that we later found to be drug evidence between the 102 and 104 mile marker. Mr. Marshall continued South on State Highway 21, Lt. West came along side Mr. Marshall for a second time and I again yelled to Mr. Marshall to pull over at which time he stated "Motherfuck ya'll, I ain't stoppin" At that point Lt. West forced Mr. Marshall to the shoulder of the road and we exited our vehicle with our guns drawn and ordered Mr. Marshall to exit his vehicle with his hands where we could see them, Mr. Marshall exited his vehicle with a very belligerent attitude and cursing. Lt. West ordered Mr. Marshall to get on the ground and Mr. Marshall turned as if he was



getting back into the vehicle and Lt. West fired his service weapon into the ground and stated "Don't get back in that vehicle, get on the ground" Mr. Marshall paused, still being belligerent and cursing at which time Lt. West approached him and put him on the ground by force and cuffed him during which time I had turned my attention to the passenger and approached his side of the vehicle and removed him without incident and cuffed. Once both parties were secure Lt. West and I looked into the vehicle and saw what later became known to us as a Rossi .357 Revolver fully loaded with 6 (six) Hollow Point bullets and an additional 34 (thirty-four) more bullets in the ash tray and on the floor, I asked Mr. Marshall was that his weapon on the seat and he stated "What ever you see is yours because you put it there, ya'll motherfuckers good for that shit." Mr. Marshall and his passenger were taken to the John Hullett Detention Facility to be processed by a Lowndes County Sheriff Deputy as Lt. West and I returned to the area where we saw Mr. Marshall throw something from the car and Lt. West recovered a empty torn baggie that at one time had contained a controlled substance.

Signature: _____

A handwritten signature in black ink, appearing to be "J. S. G.", written over a horizontal line.

SERVING BUTLER, CRENSHAW AND LOWNDES COUNTIES
146 EAST FOURTH STREET
LUVERNE, ALABAMA 36049
334-335-3340

COURTESY WARNING

DATE 6-20-05 TIME 2:00 pm
For: 6-25-05

SPEEDING _____ MPH _____ MPH ZONE

IMPROPER LANE USAGE

FAILURE TO YIELD

IMPROPER TAG

FAILURE TO SIGNAL

RED LIGHT

FOLLOWING TO CLOSE

STOP SIGN

IMPROPER TURN

DEFECTIVE EQUIPMENT _____

OTHER/REMARKS Attempted to Elude, No Seat Belt

MAKE OF VEHICLE Chevrolet YEAR 1971 COLOR Blue

VEHICLE TAG # _____ STATE AL.

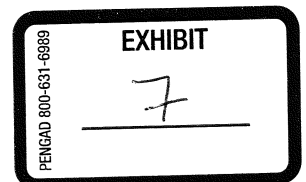
LOCATION Highway 21 S. Lowndes County

THIS IS A COURTESY WARNING ONLY AND WILL NOT REFLECT ON YOUR
OPERATORS LICENSE

[Signature] 6018769 STATE AL.
VIOLATOR DRIVERS LICENSE #

[Signature] ID DE-1
AGENT

THE LIFE YOU SAVE MAY BE YOUR OWN



06MG00466

Sub# 1 Received (11/28/2005)

|||||

2nd Judicial Drug Task Force
Case# 05-06-011

Evidence Submis

Date: 11-28-05

County: Lowndes

Suspect(s): Richard J. Marshall
Suspect(s):

Race: B Sex: M DOB: Adult
Race: Sex: DOB:

Subject(s):
Subject(s):

Race: Sex: DOB:
Race: Sex: DOB:

Requesting Agent: C.S. West

Title: Commander

Office No. (334) 335-3340 Fax No. (334) 335-6401 Normal Duty Hours: 9am-5pm

Agency: 2d Judicial Circuit Drug Task Force

Mailing Address: PO Box 795 North Tuskeena Street Hayneville, Alabama 36040

Law Enforcement Case No: 05-06-011

Property No.: 01

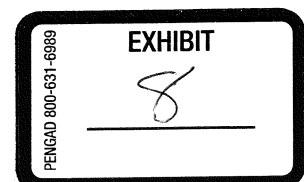
Type Case (CHARGE): Possession

Brief History of Case: Offender found to be in possession while attempting to elude

*Evidence Submitted: residue

Examination Requested: Drug Analysis

***NOTES THAT EVIDENCE IS IN A CLEAR SEALED PLASTIC BAG**





ALABAMA
DEPARTMENT OF FORENSIC SCIENCES

REGIONAL LABORATORY
P.O. BOX 210516
MONTGOMERY, AL 36121-0516
(334) 242-2938
FACSIMILE (334) 240-3284

MEDICAL EXAMINER
P.O. BOX 240591
MONTGOMERY, AL 36124-0591
(334) 242-3093
FACSIMILE (334) 260-8734

EVIDENCE RECEIPT

CASE NUMBER: 06MG00466 ID: 1 TYPE: Controlled Substances REFERENCES: LAB: MG
AGENCY NUMBER: 05-06-011 ORI NUMBER: AL045 TASK DATE: 11/28/05 TIME: 1:22 pm

CASE NAMES	TYPE	RACE	SEX	DOB	AGE	STATUS
Richard J Marshall	S	B	M			

CHAIN OF CUSTODY	DATE	TIME
Secured at Montgomery Regional Laboratory Evidence Intake Area	11/28/05	1:22 pm

DESCRIPTION OF EVIDENCE: SERVICE REQUESTED:
1 One brown paper bag identified to contain drug evidence DRUG CHEMISTRY

ALL ITEMS LISTED ABOVE ARE AS DESCRIBED BY THE SUBMITTING AGENCY AND ARE SUBJECT TO VERIFICATION UPON INSPECTION BY THE ANALYST

REPORT TO:

Commander C. S. West
2nd Judicial Drug Task Force
146 East 4th Street
Luverne, AL 36049

SUBMITTED BY:

G. Lashun Hutson



ALABAMA
DEPARTMENT OF FORENSIC SCIENCES

REGIONAL LABORATORY
P.O. BOX 210516
MONTGOMERY, AL 36121-0516
(334) 242-2938

MEDICAL EXAMINER
P.O. BOX 240591
MONTGOMERY, AL 36124-0591
(334) 242-3093

CERTIFICATE OF ANALYSIS

Commander C. S. West
2nd Judicial Drug Task Force
146 East 4th Street
Luverne, AL 36049

CASE NUMBER: 06MG00466

SUBMITTING AGENCY CASE NUMBER: 05-06-011

SUSPECT(S):	Richard J Marshall	Race	Sex	Date of Birth	Status
		B	M		Adult

SERVICE REQUESTED: Drug Analysis

CHAIN OF CUSTODY:

	DATE	TIME
G. Lashun Hutson from 2nd Judicial Drug Task Force	11/28/2005	13:22
Michael L. Hitchcock	12/01/2005	14:35
Robert Agee	01/13/2006	08:59

DESCRIPTION OF EVIDENCE:

- One brown paper bag containing residue

RESULTS OF ANALYSES:

DATE(S) OF ANALYSES: 01/26/2006

- Laboratory analyses of the residue failed to reveal the presence of any controlled substances.

Sworn to and subscribed to me this the 2nd Day of Feb. 2006 as true and correct



Alabama Department of

Public Safety

BUREAU OF INVESTIGATION

FINGERPRINT EXAMINATION REQUEST
ABI-28 (2-95)RETURN TO: LATENT PRINT UNIT
P.O. BOX 1511
Montgomery, AL 36192-0501
Phone: (334) 242-4244

TYPE OR PRINT CLEARLY (USE BLACK INK) AND SUBMIT IN TRIPLICATE

1. CONTRIBUTOR TITLE: <i>2nd Judicial Dist. Court, Etc.</i>		6. CONTRIBUTOR CASE NO: <i>05-06-011</i>	
2. NAME <i>Christopher S. West</i>		7. TYPE OF CRIME: <i>Drug</i>	
3. AGENCY: <i>Se...</i>		8. DATE OF CRIME: <i>6-26-05</i>	
ADDRESS <i>196 E. 4th Street</i>		9. VICTIM OF CRIME:	
CITY <i>Lowville</i>		10. DPS LATENT CASE NO: <i>09-1108-35-05</i>	
STATE <i>AL</i>		ZIP <i>36049</i>	
4. PHONE NO: <i>334-235-3346</i>		11. NEW CASE: <input checked="" type="checkbox"/>	12. ADDITIONAL EVIDENCE OR SUSPECT
5. REPORT TO: <i>Se...</i>		13. SPECIAL INSTRUCTIONS:	

14. SUBMITTED BY: <i>Christopher S. West</i>	PRINT NAME	15. SIGNATURE <i>[Signature]</i>	16. AGENCY <i>2nd JDTF</i>	17. DATE/TIME <i>7-12-05/1:05pm</i>
---	------------	-------------------------------------	--	--

18. DETAILED LIST OF ITEMS SUBMITTED: INCLUDE NAME, RACE, SEX, DOB, OF ALL SUSPECTS. USE EXTRA SHEETS IF NECESSARY

O'Brien Paper Bag containing clear plastic baggie.

19. FOR DPS USE ONLY

RECEIVED BY: <i>Se...</i>	PRINT NAME	SIGNATURE <i>[Signature]</i>	HOW RECEIVED <i>Personally</i>	DATE/TIME <i>7-12-05 1:09pm</i>
EVIDENCE RETURNED TO: <i>Christopher S. West</i>	PRINT NAME	SIGNATURE <i>[Signature]</i>	AGENCY <i>2nd JDTF</i>	DATE/TIME <i>8:25:05 1:09pm</i>
EVIDENCE RETURNED BY: <i>Sharon Pittman</i>	PRINT NAME	SIGNATURE <i>[Signature]</i>	HOW RETURNED <i>MAIL</i>	DATE/TIME <i>8:25:05 1:09pm</i>

LOG NO: <i>099</i>	AS	CAS	CLTR	LTR	NLV	TYPE	REV.	EXHIBIT NO:
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Alabama Department of
Public Safety


BUREAU OF INVESTIGATION

FINGERPRINT EXAMINATION REQUEST
ABI-28 (2-95)

RETURN TO: LATENT PRINT UNIT
P. O. BOX 1511
Montgomery, AL 36192-0501
Phone: (334) 242-4244

TYPE OR PRINT CLEARLY (USE BLACK INK) AND SUBMIT IN TRIPLICATE

1. CONTRIBUTOR TITLE: <i>2nd Judicial Drug Task Force</i>		6. CONTRIBUTOR CASE NO: <i>05-06-011</i>	
2. NAME <i>Christopher S. West</i>		7. TYPE OF CRIME: <i>Drug</i>	
3. AGENCY: <i>Seema</i>		8. DATE OF CRIME: <i>6-28-05</i>	
ADDRESS <i>146 E. 4th Street</i>		9. VICTIM OF CRIME:	
CITY <i>Zionville</i>	STATE <i>AL</i>	10. DPS LATENT CASE NO: <i>09-1108-35-05</i>	
4. PHONE NO: <i>334-335-3340</i>		11. NEW CASE: <input checked="" type="checkbox"/>	12. ADDITIONAL EVIDENCE OR SUSPECT
5. REPORT TO: <i>Seema</i>		13. SPECIAL INSTRUCTIONS:	

14. SUBMITTED BY: <i>Christopher S. West</i>	PRINT NAME	15. SIGNATURE 	16. AGENCY <i>2nd JDTF</i>	17. DATE/TIME <i>7-13-05 1:09pm</i>
---	------------	---	--	--

18. DETAILED LIST OF ITEMS SUBMITTED: INCLUDE NAME, RACE, SEX, DOB, OF ALL SUSPECTS. USE EXTRA SHEETS IF NECESSARY

① Brown Paper Bag containing clear plastic baggie.

19. FOR DPS USE ONLY

RECEIVED BY: <i>SF Shannon Fitzgerald</i>	PRINT NAME	SIGNATURE	HOW RECEIVED <i>Personally</i>	DATE/TIME <i>7-13-05 1:09pm</i>
EVIDENCE RETURNED TO:	PRINT NAME	SIGNATURE	AGENCY	DATE/TIME
EVIDENCE RETURNED BY:	PRINT NAME	SIGNATURE	HOW RETURNED	DATE/TIME

LOG NO: <i>049</i>	AS	CAS	CLTR	LTR	NLV	TYPE	REV.	EXHIBIT NO:
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Alabama Department of

Public Safety

REPLY MAY BE MADE TO:

Shannon Fitzgerald
ABI HeadquartersDate: 8-25-05

Dear Contributor:

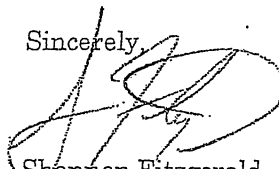
The enclosed case file is being returned to your department for the following reason:

☐ Statute of Limitations Has Expired☒ No latent prints of value were found on the evidence which:☒ is enclosed☐ is being forwarded to the Department of Forensic Sciences.☐ is being retained for pick up by your department.Retention of this file is recommended until such time your department determine it
Has no evidentiary value.

This file is the original and no copy will be retained by this department.

If this department can be of further assistance to you, please do not hesitate to
Contact me at (334) 395-4320.

Sincerely,

Shannon Fitzgerald
Certified Latent Print Examiner
Alabama Bureau of Investigation

SF/ss

